Volume II

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 86

UNITED STATES, APPELLANT,

vs.

THIRD NATIONAL BANK IN NASHVILLE, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

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(Pages 169 to 323)

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Volume II

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[fols. 1-135] IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION

Civil Action No. 3849

UNITED STATES OF AMERICA, Plaintiff,

vs.

THIRD NATIONAL BANK IN NASHVILLE, AND NASHVILLE BANK AND TRUST COMPANY,

and

COMPTROLLER OF CURRENCY—Intervenor, Defendants

BEFORE: The Honorable WILLIAM E. MILLER, Judge.

Transcript of Proceedings—April 26, 1966—June 14, 1966

[fols. 136-166] APPEARANCES:

For the United States of America:

Mr. James L. Minicus, Mr. Robert C. Weinbaum, Mr. Daniel R. Hunter, Mr. Francis G. McKenna, Department of Justice, Washington, D. C.

For the Defendant Banks:

Mr. Edwin F. Hunt, Boult, Hunt, Cummings, and Conners, American Trust Building, Nashville, Tennessee. Mr. Henry W. Hooker, Hooker, Hooker, and Willis, 214 Union Street, Nashville, Tennessee. Mr. Frank M. Farris, Jr., Farris, Evans and Evans, 3rd National Bank, Nashville, Tennessee.

For the Intervenor Defendant, Comptroller of Currency:

Mr. Charles H. McEnerney, Mr. Joseph J. O'Malley, Mr. Franz F. Opper, Comptroller of the Currency, Washington, D. C.

* * * * * * *

[fol. 167] April 26, 1966.

WALTON G. GAMBILL, a witness called for and on behalf of the plaintiff, after having first been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hunter:

* * * * * * *

Q. What is your present position and some of your duties in that position?

A. I am vice-president and cashier of the First American National Bank of Nashville. Some of my duties would be to handle the bank's daily cash position, see that we keep the proper reserves. I also endeavor to keep up with the various regulations and the laws and see that the bank operates within those laws.

I handle the foreign business for the bank, and do some lending and also solicitation of new business.

Q. How long have you been in the banking business in Nashville?

A. Something over thirty-seven years.

* * * * * * *

[fol. 168] Q. What commercial banks are located in Davidson County?

A. Well, in addition to First American, there is the [fol. 169] Third National Bank, Commerce Union Bank, Capital City Bank, Citizens Savings Bank and Trust Company, the Bank of Goodlettsville, and the Bank of Whites Creek.

Q. Was there another bank in 1963?

A. There was.

Q. What was that?

A. The Nashville Bank and Trust Company.

Q. In 1963 which banks did you regard as your principal rivals for business?

A. It would be the Third National Bank, the Commerce Union Bank, and the Nashville Bank and Trust Company.

Q. Are you generally aware of what interest rate other

banks in Davidson County are paying on time deposits, Mr. Gambill?

A. Generally, yes.

Q. On savings accounts?

A. Yes.

Q. Are those rates substantially identical for all banks in Davidson County?

A. They are.

Q. What does your bank do, if anything, when another bank in Nashville changes its rates on time deposits?

A. We would review our own condition, how badly we probably needed deposits and how much we would think the change would affect our competitive position. And, [fols. 170-171] if we thought it justified, we would also change.

Q. Would a change generally follow?

A. Generally a change, yes.

Q. Which group of banks in Davidson County have generally been the leaders in changing these rates?

A. I don't feel you could specify just any one bank as having been the leader, but I would say that the three larger banks—the Third National, the Commerce Union, and our bank—generally led the way in making the changes.

Q. The charges on checking accounts: Are they substantially similar for banks in Davidson County?

A. We all have different facilities for fixing the charges, but I would say that the results are substantially the same —the end result, the total charge as to the activity. But the method of computing these charges would be different, and arrived at by each institution individually.

Q. Does First American offer real estate loans?

A. We do.

* * * * * * *

[fol. 172] Q. What is your present legal lending limit, Mr. Gambill?

A. Our legal lending limit is $2,700,000, which is ten percent of our capital and surplus.

Q. What procedure does your bank follow when a borrower asks for more than your legal lending limit?

A. If we felt the loan was justified, we would offer the

[fol. 173] excess of any amount we wanted to take to our correspondents.

Q. Are you generally successful in placing these loan participations?

A. Yes, we are.

Q. In your opinion has the Nashville community been hampered in any way because of your legal lending limit?

A. No.

Q. Did First American provide correspondent banking services in 1963, Mr. Gambill?

A. We did.

Q. Could you tell us what some of those services are?

A. I would say the primary services would be the collection of checks for the correspondent banks, the participation in the loans of their customers, not necessarily excess loans but it would include excess loans.

But quite often your correspondents might have more loans than they wanted and ask you to handle a loan for them. Also, advising them as to their investments and generally handling any foreign transactions they might have.

And also, in the case of smaller banks in the outlying areas, you might handle some trust business for them where they didn't have trust services.

Q. Does First American have a computer?

[fol. 174-177] A. We do.

Q. Is this available to correspondent banks?

A. It is.

Q. Was Nashville Bank and Trust Company a correspondent of First American prior to its merger?

A. It was.

Q. Were these services available to Nashville Bank and Trust Company?

A. They were, the same as to any other correspondent.

* * * * * * *

[fol. 178] Q. Were you generally familiar with the performance of Nashville Bank and Trust Company prior to its merger with Third National Bank?

A. Yes, I was generally familiar with its operation.

Q. How did you have occasion to become familiar with its performance?

A. Well, acting in a correspondent relationship, we handled certain phases of their business for them; and also from a competitive standpoint they were soliciting our [fols. 197-182] accounts, and we in turn were soliciting their accounts, which is the general situation.

Q. How would you evaluate its performance prior to the merger?

A. Prior to the merger I would say for the past ten years they had an unusual deposit growth from the percentage standpoint, having more than doubled their deposits; and their earnings were satisfactory.

Q. Was Nashville Bank and Trust Company an active rival of First American in most phases of the banking business?

A. They were, particularly during the past ten years.

Q. What if any, Mr. Gambill, are the benefits to the Nashville community of a bank the size of Nashville Bank and Trust Company?

A. I think a medium-sized bank does have one advantage over the larger banks in that they are in a position to offer more personal service, and actually to know more of their customers by name than the officers of a larger bank.

* * * * * * *

[fol. 183] Cross-examination.

By Mr. Farris:

Q. And then it would be—is it a true statement then that as a general practice, First American would not solicit business, solicit the customers of a correspondent bank?

A. Out——

Q. Unless they needed an excess line, maybe?

A. Outside of Nashville, I would say that.

Q. Well now, that's what I wanted to bring up here, you described the Nashville Bank and Trust Company as a correspondent of First American.

A. It was.

[fols. 184-186] Q. And did you follow the practice of soliciting accounts of the Nashville Bank and Trust Company?

A. We did.

Q. Prior to 1963?

A. We did.

Q. In spite of the fact that they were your correspondent?

A. We did.

Q. Now was that a very intense solicitation, or was it equal to that you made on the customers of Third National and Commerce Union?

A. I would say it was equal during the past ten years, because they become so active in soliciting our customers that we had no choice. I mean if it meant losing the correspondent business, we would have preferred to have the local customers.

* * * * * * *

[fol. 187] By Mr. Farris:

Q. Mr. Gambill, what was the legal loan limit for First American during the early part of 1964?

A. I would say it was two million five, but I can't recall when our capital and surplus was changed.

The Court: What is the limit now?

The Witness: It's two million seven. We added two million to surplus just last year, I believe it was, and prior to that, it was two million five, and it has changed several times during the last six or eight years, through the sale of stock and payment of dividends and such.

By Mr. Farris:

[fols. 188-189] Q. Do you find that that larger loan limit, that increase helped you serve your customers better?

A. Not particularly. I don't think we have had occasion to use the complete limit since that—since it's been increased frankly. There are few borrowers where a bank uses their complete loan limit.

Q. You say you haven't had occasion to use your limit?

A. I say I don't recall of a time that we have. It would possibly in one instance to one large borrowing customer, we possibly could have used our entire limit, but generally speaking, we have not used it, and generally speaking, a bank don't use their entire loan limit.

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[fols. 190-192] Q. Now, Mr. Gambill, would you consider it bad policy to make loans without credit files?

A. I certainly would unless I knew the individual personally. If I knew about the individual personally, why then I wouldn't necessarily consider it bad policy, but generally speaking, it would be.

Q. Well, do you think a bank could know enough about everybody it dealt with personally not——

A. Not everybody.

Q. Not to need any credit file?

A. Not everybody, no.

* * * * * * *

[fol. 193] By Mr. Farris:

Q. Now, Mr. Gambill, you said that First American rendered some service to Nashville Bank and Trust Company because it was a correspondent.

What did that correspondent service consist of?

A. It consisted of collecting their out-of-town checks [fol. 194] for them. It consisted of making money transfers to cities where possibly they didn't have a connection. We offered our computer service to—we made it available to the Nashville Bank and Trust Company. At least it was offered to them just the same as it was to any other correspondent bank.

Q. Well, in other words, their checks were going through your bank, is that——

A. Out-of-town checks, yes, sir. Their local checks were cleared by them through the local clearing house association. We also settled their payments for their loss in the clearings, if any, since we were a member of the Federal Reserve System, and they were not, and the bank clearings must be paid by Federal Reserve funds, so we did settle that loss for them at the clearing house.

Q. Do you know of any bank who has a computer who is doing computer service for a competitor?

A. Well, I'd say to a very nominal extent, banks naturally would do computer service for banks that in a way are competitive, particularly if they are located in the same area. We might do computer service for a bank up at Lebanon, Tennessee, and in some far-fetched instances,

we might be competitive with them on an account. It's not the normal thing, I would say that, but you can't say that it's not done to some extent.

[fols. 195-332] Q. It would again give a competitor some insight into the business of the bank whose computer work was being done, would it not?

A. It would.

Q. It would have that disadvantage?

A. Yes.

Q. The Nashville Bank and Trust did not use your computer service?

A. It did not.

Q. Did any other Davidson County bank use it?

A. No.

* * * * * * *

[fols. 333-337] JOSEPH FUTORAN, a witness called to testify by and in behalf of the Defendant, after having first been duly sworn, was examined, and testified as follows:

Direct examination.

By Mr. Minicus:

* * * * * * *

Q. What is your present employment?

A. I am engaged as a staff economist for the United States Department of Justice, Antitrust Division, in the Economic Section.

* * * * * * *

[fol. 338] By Mr. Minicus:

Q. Mr. Futoran, I direct your attention to the statistics designated for the Nashville Bank and Trust Company during the period 1955 into 1964, and ask you to describe the progression of total assets in that company during that period.

A. In 1955, June, the Nashville Bank and Trust Com-

pany had assets in round numbers of $24 million. This increased to a high point of $52.5 million in June 1963, and then declined slightly to $50,863,000 in June 1964, which was the last official call date prior to the consummation of the instant merger.

Q. What were the total assets of Nashville Bank and Trust Company in December 1963?

A. $47,332,000.

Q. And what were the assets in June of 1964?

[fols. 339-342] A. $50,863,000.

Q. What change had taken place in the company with regard to its total assets in that period?

A. There was an increase of approximately $3.5 million.

* * * * * * *

[fols. 343-345] Q. If you added the percentages possessed by the three largest banks in Davidson County in June 1965, what percent of the bank assets were controlled by the three?

A. 97.8 percent.

Q. What did that leave for the remaining four smaller banks in the county?

A. 2.2 percent.

* * * * * * *

[fol. 346] By Mr. Minicus:

Q. Mr. Futoran, I direct your attention to the loan statistics indicated on this table of the Nashville Bank and Trust Company and ask you to describe their progression dur-[fol. 347] ing the period of the study.

A. In June, 1955, Nashville Bank and Trust Company had in round numbers eight million dollars in loans. This generally increased through the years reaching in June, 1964, close to twenty-three million dollars in round numbers or almost three times the amount which it first started with ten years prior to this.

* * * * * * *

[fols. 348-349] Q. What are your conclusions, sir, with regard to the progress of Nashville Bank and Trust Company's loan account relative to those of Third National Bank?

A. Well, it not only maintained the same trend by way of growth, but relatively increased in proportion.

Q. It increased——

A. That's Nashville Bank and Trust Company gained proportionately to that of Third National. So that its record actually based on its own initial size was better percentage-wise than that of Third National Bank.

* * * * * * *

[fol. 350] Q. If you added the percentage held by the three big banks in the city together of loans, what percentage of the total loans held by banks in the county would they have?

A. 97.6 per cent approximately.

Q. What does that leave for the four smaller banks in the county?

A. 2.4 per cent.

* * * * * * *

[fol. 351] A. Nashville Bank and Trust Company in June, [fols. 352-353] 1955, to the nearest round figure, had $21,000,000 in total deposits which increased generally through the years to a high point in June, 1963, of almost 47.5 million dollars, declined slightly in December, 1963, but by June, 1964, had recovered to almost 45.5 million dollars.

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Q. What was the dollar value of deposits in December, 1963?

A. $42,000,000 plus.

* * * * * * *

Q. And in June of 1964?

A. It was $45,471,000.

Q. In this——

A. Showing an increase, of course, of $3,300,000, approximately.

Q. And when did that occur?
A. Between December, 1963, and June, 1964.
Q. And how long after June, 1964, was this merger?
A. About a month and a half.

* * * * * * *

[fol. 354] Q. Well, during this ten-year period, Mr. Futoran, what would you say was the position that developed within Nashville Bank and Trust Company relative to Third National Bank in deposits?

A. Proportionately, proportionate to its own size, there was a larger increase, larger relative increase for Nashville Bank and Trust Company in the total deposits than there was for Third National Bank in Nashville.

* * * * * * *

[fols. 355-358] Q. I ask you, Mr. Futoran, what percentage of all deposits held by Commercial banks in Davidson County, was held by the big three?
A. 97.7 per cent.
Q. And what percentage of deposits did they leave for the four smaller banks in the county?
A. 2.3 per cent approximately.

* * * * * * *

[fol. 359] Q. Now, sir, what were the IPC deposits in the Nashville Bank and Trust Company in June 1955?
A. In June 1955, in round figures, the demand deposits or IPC were $10 million for Nashville Bank and Trust.
Q. And what were they for Third National Bank?
A. In June of 1955?
Q. Yes, sir.
A. In round figures, $62 million.
Q. Will you explain the ratio between the two banks at that time?
A. At this time the deposits, IPC, held by Third National Bank were approximately six times the amount of Nashville Bank and Trust Company.

Q. Addressing yourself to June 1964, just prior to the merger, what was the situation with regard to the ratio of IPC demand deposits then?

A. It was approximately five and a half to one, sir.
[fols. 360-361] Q. What would you conclude within your experience from the two ratios that you have given us?

A. In demand deposits, IPC, each relative to its own size, the gain by Nashville Bank and Trust again exceeded that of Third National Bank through this period of time.

Q. Have you computed, Mr. Futoran, the percentage of total IPC deposits held by the big three banks in Davidson County?

A. Yes, sir. In June 1965 the approximate percentage was 97.9.

Q. What percentage of IPC demand deposits did that leave for the four remaining banks in the county?

A. 2.1 percent.

*   *   *   *   *   *   *

[fol. 362] By Mr. Minicus:

Q. I direct your attention, Mr. Futoran, to the trust department revenues of the Nashville Bank and Trust Company and ask you to describe the direction in which they went during the period of your study.

A. There was an increase from $152,000 for Nashville Bank and Trust Company in 1955 to $265,000 in 1963; and up to the date of the merger—or through the seventeenth of August, 1964—$199,000.

Q. What period of time in August 1964 does that revenue figure of $199,000 cover?

A. Approximately seven and a half months of the year.

*   *   *   *   *   *   *

[fol. 363] Q. Will you tell us about the moneys through the years taken in by the Third National trust department and relate those figures to the revenues of Nashville Bank and Trust Company?

A. In 1955, the revenue for the trust department of Third National Bank was $197,000, which declined in 1956 and 1957; and increased, but still didn't come up to the 1955 point in 1958; and then generally increased to $331,000 in 1963, or approximately $66,000 more than that of the revenue of Nashville Bank and Trust Company.

Q. Generally speaking, with regard to moneys taken

in, what would you say about the size of the two trust [fols. 364-367] companies as reflected on these revenue figures?

A. Would you mind restating your question, sir?

Q. What is your conclusion with regard to the relative size of the two trust companies through the years with regard to the moneys taken in?

A. Well, they were quite close and quite comparable as far as the incomes of the two trust departments were concerned.

* * * * * * *

[fol. 368] A. Referring first to the total revenue, that of Nashville Bank and Trust started in—or at least on this tabulation, 1955, it had $1,200,000 in round figures which increased to $2,348,000 in 1963, which was almost doubling the original figure, 1955.

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A. For the Nashville Bank and Trust Company, 1955, [fols. 369-370] the net income after taxes in round figures was $99,000.00 which increased generally to a high point of $380,000 in 1962. For the year 1963, there was a slight decline to $368,000.

Q. And what happened in 1964?

A. The amount for the first seven and a half months was $341,000 up to the date of the merger.

* * * * * * *

[fol. 371] If you will direct your attention, sir, to the column under assets, what was the percentage increase in asset value of the Nashville Bank and Trust Company from 1955 to 1964?

A. 110.9 per cent.

Q. Was there any other bank in Nashville that could show that rate of growth?

A. No, sir, there was not.

Q. What comparable to that 110.9 per cent to which you have just testified for Nashville Bank and Trust, what was the percentage rate of growth in assets of the Third National Bank?

A. 105.4 per cent.

Q. And for First American National?

A. 79.4 per cent.

Q. And for Commerce Union?

A. 93.2 per cent.

Q. Now we were told the other day, Mr. Futoran, that as these things get smaller and start from a lower base, they go up more rapidly. Will you kindly look at all other banks which includes the small banks in the city and tell us what their rate of increase in assets were for this period?

A. Well, the smaller banks as a group increased by 100.3 [fol. 372] per cent.

Q. And is the more or less than the increase shown at Nashville Bank and Trust Company?

A. It's less.

Q. By what percentage?

A. By 10.6 percentage points.

Q. Thank you, sir.

I ask you to direct your attention to the column for loans.

Will you tell us which bank during the period of your study had the largest percentage increase for loans?

A. During this period, it was Nashville Bank and Trust Company that showed the largest relative growth.

Q. In what?

A. In loans.

Q. And what was the percentage increase in loans for the Nashville Bank and Trust Company during your period of your study?

A. 181.5 per cent.

* * * * * * *

[fols. 373-380] Q. * * * Now if you will shift your attention to the deposit column, which bank in Davidson County showed the greatest rate of percentage increase during the time of your study?

A. Nashville Bank and Trust Company did.

Q. And what was the rate of increase during this decade for Nashville Bank and Trust Company?

A. 118.7 per cent.

* * * * * * *

[fol. 381] Q. Now, sir, if you will scrutinize the second triple column, earnings on loans from 1955 to 1963, I again ask you to testify with regard to the growth in National Bank and Trust Company during this decade in earnings and loans.

A. During this period of time from the year 1955 to 1963, the revenue from or earnings on loans of Nashville Bank and Trust Company exceeded that of the growth of any other bank in Davidson County or Nashville, Tennessee, with a percentage increase of 210.9 per cent.

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[fol. 382] Q. I ask you now to observe the third triple column under the heading, "Trust Department Revenues." Which bank in Davidson County had the greatest rate of increase for trust department revenues?

A. That of First American National Bank.

Q. And what was its rate of increase during this decade?

A. 113.5 percent.

[fols. 383-384] Q. Which bank had the second largest rate of increase in trust department revenues?

A. That of Nashville Bank and Trust Company.

Q. And what was its rate of increase?

A. 74.3 percent.

* * * * * * *

[fols. 385-390] Q. Which bank in Davidson County for that decade shows the highest percentage increase in net income after taxes?

A. For this period Nashville Bank and Trust Company shows the highest percentage increase.

Q. What was the percentage of increase in Nashville Bank and Trust Company from 1955 through 1963?

A. 271.7 percent.

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[fol. 391] In 1962, how did the net current earnings to capital accounts compare with all member banks in the 6th Federal Reserve District of which Davidson County is part?

A. Nashville Bank and Trust Company had a ratio of 16.8 as compared with 14.5 for all of the member banks in

the 6th Federal Reserve District. In other words, it was slightly higher.

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[fol. 392] Q. Now how does the ratio for net current earnings to capital accounts of Nashville Bank and Trust Com- [fol. 393] pany compare with other Federal Reserve Banks in Tennessee in its same class?

A. It was slightly above that. In other words a ratio of 16.8 for Nashville Bank and Trust as compared with 16.3 per cent for the members of the—the Federal Reserve member banks.

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[fols. 394-396] Q. Now would you direct your attention to the second column net income after taxes to capital accounts and make—attempt to summarize the same type of description you have just made with net current earnings?

A. Well, Nashville Bank and Trust Company, in this category, its ratio is slightly higher than that of Commerce Union. It was about the same approximately, just a shade under the Federal Reserve—well, it was actually higher than the average for all of the member banks of the Federal Reserve in the 6th District. It was just a shade under—that is 9.4 for Nashville Bank and Trust, 9.6 for the Federal Reserve member banks of over fifty million dollar deposits in Tennessee, and it was a little—well, it was under the respective ratios for Third National Bank and American National—I'm sorry, First American National.

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[fol. 397] Q. Will you simply summarize for us, Mr. Futoran, the results portrayed under the ratio of total loans [fol. 398] to total assets?

A. Yes, sir. The Nashville Bank and Trust Company in this regard compares very favorably with the average for all of the member banks in the Sixth Federal Reserve District. In fact, it is slightly in excess, 40.9 to 40.2, for the member banks; and it is slightly less than the larger member banks in Tennessee—that is, over $50 million deposits.

Q. How does it compare with the three other banks in Nashville?

A. It is less than the big three banks—each of the big three.

Q. Is there a substantial difference between it and Nashville Bank and Trust Company?

A. You mean between——

Q. Is there a substantial difference between Nashville Bank and Trust Company and Third National Bank?

A. The difference is 40.9 for Nashville Bank and Trust Company, and the figure for Third National Bank is 49.6.

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[fol. 399] A. Yes, sir. This was simply a computation of the revenues as shown on these reports for the trust department of the total current operating revenue. And in the case of Nashville Bank and Trust Company, there was a percentage of 11.9, which by far exceeds any other ratios.

Q. What does that mean, it was 11.9?

A. In other words, of the total current operating revenues for Nashville Bank and Trust Company during the year 1962, the trust department revenues were almost 12 percent of the total revenue for the bank.

Q. How do the rest of the revenues for the banks in Nashville for the Sixth Federal Reserve District and for the Tennessee banks show up?

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A. It was definitely in excess—that is, the Nashville Bank and Trust—because the Sixth Federal Reserve, all member banks were 2.8 percent; and for the same size class as Nash-[fols. 400-403] ville Bank and Trust Company, it was 1.2 percent. For the group over $50 million deposits, the percentage was 3.4.

Q. What do these big differences mean in terms of practical application?

A. It would indicate the significance and the size relatively of the trust department of Nashville Bank and Trust Company.

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[fols. 404-409] Q. And what was the total of the interest of the three big banks from the point of view of assets after the merger?

A. 97.8 percent.

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Q. With regard to Nashville Bank and Trust Company did its percent of deposits between December 1963 and June 1964 increase or decrease?

A. It increased.

Q. From what percentage to what percentage?

A. 4.6 to 4.8.

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[fol. 410] Q. Thank you. Now what were the relative rankings of the two banks during 1965 with respect to operating revenues?

A. Well, during 1964, here based on reports in Moody's Banks and Finance News, which is a standard reference [fols. 411-417] book in this field, I did not have, and still do not have the data for this year for this information. The income or the total revenue for Third National was 20.6 million dollars. That of First American in round figures, 19.8 million dollars.

Q. So in 1965, which bank was the leading bank from the point of view of operating revenues?

A. Third National Bank.

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A. In other words, of the total current operating revenues for all of the banks in this community, the four smaller banks received 2.4 per cent of that total, namely the banks of Capital City, Bank of Goodlettsville, Citizens Savings and White's Creek.

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[fol. 418] Q. What was the highest single loan limit for Third National Bank on June 30, 1964?

A. $2,300,000 in round figures.

Q. And what was the single legal loan limit for the Nash-

ville Bank and Trust Company at the high point for June 30, 1964?

A. On the basis of twenty-five per cent, its high point was slightly over one and one quarter million dollars—I beg your pardon, $1,125,000.

Q. Now what was the highest single loan limit for the Third National Bank on October 1, 1964 after the merger?

A. Sir, would you mind repeating the question?

[fol. 419] Q. What was the highest single loan limit for the Third National Bank on October 1, 1964, subsequent to the merger?

A. $2,759,000, in round figures.

Q. Now I ask you to go back, sir, to June 30, 1964. When the merged banks were separate entities on that date, what was their combined loan limit?

A. $3,430,000, in round figures.

Q. Was that combined loan limit higher than the loan limit of the resulting bank on October 1, 1964?

A. Yes, sir.

Q. At which time would more credit have been available to this community?

A. On June 30, 1964.

Q. Why do you say that?

A. Because if we combine the single legal loan limits when the banks were separate and independent, we come up with a total combined limit of over $3,400,000 in contrast with a reduced figure of $2,759,000 in the resulting bank subsequent to the merger.

Q. What did this larger amount of credit mean to the community?

A. It meant that any individual, partnership, or corporation could obtain more money if the banks participated—which they actually did; I believe it was in July of 1964—[fols. 420-422] involving a loan and one of the prominent names was a very prominent Nashvillian. In July they were able to accomplish a much greater amount between them participating than they could in the resulting bank subsequent to the merger.

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[fols. 423-426] Q. And what was the ranking of the Nashville Bank and Trust Company, considering all banks in the state at this time?

A. Well, for all of the banks it was twelfth in size by way of deposits.

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[fol. 427] Q. We use the expression "big three in Nashville." What three banks does that comprise?

A. Third National Bank, First American, and Commerce Union.

Q. So Commerce Union was one of the large banks in the city?

A. Yes, sir.

Q. What was its annual salary per officer?

A. $8.4 thousand in round figures.

Q. What does that mean? Will you spell that out, sir?

A. Yes, sir. $8,419.33 average salary per officer of Commerce Union for that year.

Q. And what was the average salary per officer at the Nashville Bank and Trust Company, a medium-sized bank?

A. $9,582.78.

Q. So by what amount did the average salary per officer in Nashville Bank and Trust Company exceed that of Commerce Union?

A. About $1,162, per year.

Q. Now, will you observe these four smaller banks in the [fol. 428] county. Will you name those four banks?

A. Yes, sir. Capital City. Bank of Goodlettsville. Citizens Savings. And Whites Creek.

Q. Of those four banks, which bank had the largest average salary per officer?

A. Capital City.

Q. And what was its average salary per officer?

A. $8,260.15.

Q. Was that greater or lesser than the average salary per officer paid by the Nashville Bank and Trust Company?

A. It was less.

Q. By what amount?

A. Approximately $1,300.

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[fol. 429] Q. How much below the average salary per officer of the Nashville Bank and Trust Company is the average of the four small banks in the community?

A. It would run four to five thousand dollars as an estimation, sir.

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Q. Which bank in the city, in the county, paid the largest salaries to its employees?

[fol. 430] A. First American National Bank.

Q. Will you name the next three in order?

A. Yes, sir. Second would be Third National. Third, Commerce Union.

Q. Which of those three paid the lowest average salary per employee?

A. Commerce Union.

Q. And what was its salary? The average?

A. $3,482.41.

Q. And what was the average salary per employee of the medium-sized bank of Nashville Bank and Trust Company?

A. $2,654.97.

Q. So the average salary per employee at Nashville Bank and Trust Company was less than the average paid by any of the big three?

A. That is correct, sir.

Q. Now, how does the annual average salary per employee of Nashville Bank and Trust Company compare with the average annual salary of the four smaller banks in the county?

A. It was comparable with them.

Q. When you say comparable, to what extent? How was it comparable?

A. Well, it exceeded that of Capital City. It was just under that of the Bank of Goodlettsville, and under Citizens Savings and Whites Creek—the latter two being $2700 and [fols. 431-433] $2900 a year.

Q. Its spread was great or not great?

A. Not particularly great, no, sir. In fact, quite small.

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[fol. 434] Q. Now during the approximate decade portrayed on this chart, which bank in Davidson County of the four larger banks in Davidson County had the largest percentage of growth?

A. Well, in the deposits, the total deposits which is reflected by the gold bars, we find that the tallest bar, the highest percentage to be that of Nashville Bank and Trust Company with a percentage increase of 118.7 per cent.

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[fols. 435-441] Q. Well, did the deposits of Nashville Bank and Trust Company more than double during that era?

A. Yes, sir.

Q. Did the deposits of any other of the three large banks in Nashville double during that era?

A. The deposits, no, sir.

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A. The green strips indicate the percentage increase in the income from 1955 through 1963.

Q. And which bank of the four larger banks in Davidson County had the largest rate of growth in income?

A. Now, sir, this is the net income after taxes, this is the actual net income to the bank, and to answer your question, Nashville Bank and Trust Company drew more proportionate to its size than any of the other banks of Davidson County during that period of time.

Q. What was its percentage—Nashville Bank and Trust Company's percentage rate of growth in income after taxes?

A. 271.7 per cent.

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[fol. 442] Cross-examination.

By Mr. O'Malley:

Q. Mr. Futoran, yesterday you testified that you attended the College of the City of New York and obtained degrees in Bachelor of Science and Master of Science.

A. That is correct.

Q. What was your major?

A. My major was history and education. I took a num-

ber of courses, though, in the history of economics; and I minored in economics and mathematics.

Q. You did not major in economics?

A. That is correct.

Q. You stated that you are not a practicing attorney. Are you an attorney?

A. No, I am not. The reason for that answer was that so many people in their biographies list "graduate attorney." I want to distinguish from that.

[fol. 443] Q. You have an LL.B., but you are not an attorney?

A. That is correct.

Q. You also indicated that you had done some teaching?

A. That is correct.

Q. Where was this done?

A. Southeastern University in Washington, D. C.; and also recently at Strayer Junior College, what is known as the Strayer College of Business and Finance.

Q. When did you teach at Southeastern University?

A. I believe it was back around 1956. I am not sure of the exact year, but it was in that period.

Q. What courses did you teach?

A. I taught a course in basic economics.

Q. How long did you teach there?

A. One semester.

Q. Is Southeastern University an accredited university?

A. Yes, to the best of my knowledge it was at that time.

Q. Does it award a Bachelor of Science degree?

A. Yes, also a Master's degree.

Q. Is it a four-year college?

A. Yes.

Q. Where is it headquartered in Washington?

[fol. 444] It is headquartered at Eighteenth and F Streets.

Q. What building is that?

A. That's in the YMCA Building. It is a low-cost college.

Q. Is this a day school or an evening school?

A. It's an evening school. I am not sure whether they have day school there at all, but of course I taught at night after working in the day.

Q. What courses do they offer, Mr. Futoran?

A. They offer quite a variety of courses, with several degrees in business and transportation. I think also gave

courses in accounting, but that was a while back and I have had no contact with them since that time.

Q. You gave the same course at Strayer Junior College?

A. No. I taught the first half at Southeastern—it was the same course except I taught the last half at Strayer.

Q. This was in 1956?

A. At Southeastern, yes.

Q. When did you teach at Strayer?

A. This last semester, the fall semester, last year.

Q. Strayer Junior College does not offer a Bachelor's [fols. 445-447] degree?

A. It had previously offered a full degree. Because of certain reasons that I am not fully acquainted with, they made it a junior college. They are accredited to give a two-year degree. It is mainly a school of accountancy and finance. For example, in the course that I taught last semester, and it is understood that I will teach there again in the fall, the head of the department by contract teaches in the spring—which worked out with the trial, by the way.

I had in my class two students who were at the time studying for their CPA examination in Maryland. Each of these not only had Bachelor's degrees, but Master's degrees.

Q. Your total experience in teaching, then, has been limited to two semesters?

A. That is correct.

Q. Including the current semester?

A. That is correct.

Q. Have you published any papers on any economic subject?

A. No, because it has been the policy down through the years—it used to be clearly stated; we haven't heard much about it in the last five or ten years—of discouraging us from writing for publication.

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[fol. 448] Q. I would ask you what the rate of growth of Third National Bank from the period of 1960 to 1964 would be, and if you wish to approximate it, I have some figures here and would suggest them to you: 49.55 percent.

A. That would sound approximately correct.

Q. The Third National Bank at 37 percent rate of growth from 1955 to 1960, and 49 percent rate of growth from 1960

to 1964: What would be the increase in the rate of growth between those two periods for Third National Bank?

A. Would you give me those figures again, please?

Q. Yes, sir. 37.25 for the period 1955 to 1960; and 49.55 for the period 1960 to 1964.

A. Will you give me just a moment, please? I want to check something.

On the addition you gave me, that is on the basis of the two figures you gave me, 49.55 and 37.25?

Q. Yes, sir.

[fol. 449] A. On that basis I got 86.8 percent, on the basis of the figures you gave me. The totals of these two would be 86.8 percent.

Q. I didn't ask the total, sir. I asked the difference in the rate of growth during the two periods.

A. I beg your pardon. A difference of 12.3 percent in comparing these two percentages.

Q. The greater growth was in the period from 1960 to 1964; is that correct?

A. That is correct, yes, sir.

Q. I refer you to the figures for American National Bank in June 1955. Will you tell us what that figure is in assets?

A. $227,052,000.

Q. I ask you to give us the comparable figure for the year 1960 in June.

A. $283,866,000.

Q. Can you approximate the growth rate of First American during that period?

A. I would like to work it out. It will only take a minute, rather than giving you a quick answer. If you have it worked out, I will accept your figure.

Q. I have a 25.02 figure. Is that about correct?

A. That's about right, yes, sir, 25.0?

Q. 25.02?

[fol. 450] A. All right.

Q. Now I ask you to read the comparable figure for June 1964 for First American National Bank.

A. $407,248,000.

Q. Can you approximate the rate of growth for the period 1960 to 1964 for First American National Bank?

A. Again, Mr. O'Malley, if you want to give me a figure, I will be happy to have it.

Q. Would 43.46 be acceptable?
A. Would you please repeat that?
Q. 43.46 percent.
A. That looks to be about correct, yes, sir. 43.06?
Q. 43.46.
A. Yes, sir.
Q. I will ask you, Mr. Futoran, what the difference in the rate of growth of First American National Bank was during the period of 1955 to 1960, as compared to the period from 1960 to 1964?
A. A little over 18 percent.
Q. Would that be an increase in the rate of growth during that period?
A. That is correct.
Q. I refer you now, sir, to the 1955 total asset figure, June 1955 to the asset figure of Commerce Union Bank, and ask [fol. 451] you to state that figure.
A. In June 1955, Commerce Union's assets were $227,-052,000.
Q. Commerce Union?
A. I beg your pardon, $116,761,000.
Q. I ask the comparable figure for June 1960 for Commerce Union.
A. $153,500,000.
Q. Can you estimate the rate of growth of Commerce Union Bank for the period 1955 to 1960?
A. I will be very happy to have your figure, sir.
Q. 31.47. Will you accept that figure?
A. I will accept it.
Q. I ask you now, Mr. Futoran, to state the total assets of Commerce Union Bank for June 1964.
A. $225,534,000.
Q. I will ask you the rate of growth of Commerce Union Bank for the period 1960 to 1964. I have a figure here, if you wish to accept it, of 46.93.

Mr. Minicus: If your Honor please, the witness, of course, is entirely able to accept these figures if he wishes. But we would only like them to go into the record subject to verification afterwards.

The Court: It is a matter of computation. What is your figure?

[fol. 452] Mr. O'Malley: Your Honor, Mr. Weinbaum has

indicated Mr. Hunter can use a slide rule, and he will provide the verifications as we proceed.

The Court: If it doesn't take any more time, it is all right. What was this last figure?

Mr. O'Malley: The last figure for Commerce Union Bank, the period 1960 to 1964, the figure we have is 43.46 percent rate of growth during that period.

By Mr. O'Malley:

Q. Mr. Futoran, will you compare the rates of growth for the periods 1955 to 1960 and the period 1960 to 1964, and the asset position of Commerce Union Bank?

A. On the basis of the percentages that you have given me, it would be about 15 percent.

Q. And that would be an increase in the rate of growth for Commerce Union Bank?

A. That is correct.

Q. Capital City had no assets in 1955. Is that correct, Mr. Futoran?

A. That is correct.

Q. So that their asset structure in 1960 represents an infinite growth over 1955. Is that correct?

A. Yes—speaking mathematically.

Q. What was the asset position of Capital City Bank in [fols. 453-456] June 1964?

A. It was $3 million——

Q. Pardon me, recite the June 1960 figure first.

A. $3,673,000.

Q. And what was its position in June 1964?

A. In June 1964 it was $9,073,000.

Q. Can you compute the rate of growth of Capital City during the 1960 to 1964 period? Our figure here is 147.02 percent.

A. Subject to checking, we will use that figure.

* * * * * * *

[fol. 457] By Mr. O'Malley:

Q. Now, Mr. Futoran, for all other banks listed on Government Exhibit 1001, 1955, total deposits were $6,492,000 in June?

A. I'm sorry, will you please give that to me again?

Q. Yes, sir, $6,492,000.

A. No, what period of time?

Q. All other banks, June, 1955. We have listed already—we have listed with the exception—pardon me, with the exception of Nashville Bank and Trust Company.

A. All right, will you give me the figure now, please?

Q. $6,492,000 for June, 1955.

A. That's correct.

Q. Is that correct?

A. Yes, sir.

Q. And the comparable figure for all other banks with the exception of Nashville Bank and Trust in June, 1960, was $8,831,000?

A. That is correct.

Q. A rate of growth for all of these other banks of 36.03 per cent, for the period June, 1955, to June, 1960.

A. What is your figure, Mr. O'Malley.

Q. 36.03 per cent?

A. All right.

Q. The comparable figure on June, 1964, for all of the other banks with the exception of Nashville Bank and Trust Company, was $13,006,000?

A. Yes.

Q. Which indicated a rate of growth from June, 1960, to [fol. 459] June, 1964, for all of these other banks of 47.28 per cent?

A. What was your answer to that, your percentage?

Q. 47.28.

A. That sounds about right.

Q. Now, Mr. Futoran, will you compare the rate of growth of all of the other banks with the exception of Nashville Bank and Trust Company for the period 1955 to 1960, to the rate of growth of those same banks during the period 1960 to June, 1964?

A. Well, on the basis of these computations that would be about an eleven per cent greater increase since 1960 over the period of 1955 to 1960.

Q. So that at the present time, Mr. Futoran, we have every bank with the exception of Nashville Bank and Trust showing a greater rate of growth from 1960 to 1964 than they did during the year 1955 to 1960, is that correct?

A. Assuming the correctness of the computations, that I did not make, the answer would be yes.

Q. And now I refer you to the figures for the Nashville Bank and Trust Company. In June, 1955, the total assets were $24,113,000?

A. Correct.

Q. In June, 1960, $42,272,000.

A. Correct.

[fol. 460] Q. Rate of growth during that period of 75.31 per cent?

A. That would be about correct.

Q. I then refer you to the assets position of Nashville Bank and Trust Company on June 19, '64, $50,863,000.

A. Yes.

Q. With a rate of growth of 20.32 per cent?

A. Did you say—what was your figure again, Mr. O'Malley?

Q. 20.32.

A. That would be about correct.

Q. And I ask you, Mr. Futoran, how the rate of growth of Nashville Bank and Trust Company, during the period 1955 to 1960, compared with the rate of growth of Nashville Bank and Trust Company for the period 1960 to 1964?

A. The rate of growth slowed up, but it did continue to grow.

Q. To what extent did the rate of growth slow, Mr. Futoran.

A. Well, there's a difference of about 55 per cent, but it did continue to grow, Mr. O'Malley.

Q. So that each of the banks, each of the banks in Nashville, established a higher rate of growth during the period from 1960 to 1964, than they did from 1955 to 1960, a higher rate of growth, but Nashville Bank and Trust Company [fol. 461] was operating at minus fifty-five per cent as compared—during the years 1960 to '64 as compared to the years '55 to '60, are those figures correct?

A. The minus 55 per cent is not one that I think—I don't think that's a proper terminology, Mr. O'Malley. I would say that it was not growing as fast proportionately, but it was still growing very noticeably.

Q. But at a rate of growth fifty-five per cent less than it was growing during the period '55 to '60, Mr. Futoran?

A. The positive side is that it was still growing at a greater rate than twenty per cent.

Q. Will you answer my question?

A. Yes, sir, I will. The answer was it was not growing as fast.

Q. I asked you if it was growing at a rate fifty-five per cent less than it grew from 1955 to 1960.

A. Relative, yes, sir.

Q. I now refer you, Mr. Futoran, to Government Exhibit 1002. It shows total loans and discounts of the commercial banks in Davidson County, Tennessee, and I ask on June, 1955, Third National had a total of 77,079,000 in loans and discounts?

A. Correct.

Q. June, 1960, Third National had a loan and discount [fol. 462] position of $129,901,000.

A. That is correct.

Q. The rate of growth in the loan position for Third National Bank during that period was 68.53 per cent?

A. Will you please give me the figure again?

Q. 68.53.

A. It looks approximately correct.

Q. I refer you then to the Third National Bank position in loans and discounts on June, 1964, $194,448,000.

A. Yes, that's correct.

Q. With a growth rate during that period of 49.69 per cent?

A. Please give me your figure again.

Q. 49.69.

A. That would appear to be approximately correct.

Q. I ask you to compare the growth rate of Third National Bank in loans and discounts between—during the period 1955, 1960, and the periods 1960 to 1964.

A. On the basis of those figures there would have been an increase of about nineteen per cent.

Q. An increase or a decrease?

A. In the latter——

Q. Increase or decrease?

A. An increase during the latter period.

[fol. 463] Q. I believe the figures here now, Mr. Futoran, that I have cited, show 68.53 per cent, the rate of growth in the earlier period, and 49.69 per cent in the latter period.

A. Oh, you're right, thank you. No, there would be a decrease percentage-wise during the latter period.

Q. In other words——

A. Of about nineteen per cent.

Q. In other words, the rate of growth of Third National during the latter period was nineteen per cent less than during the earlier period?

A. That is correct, thank you, Mr. O'Malley.

Q. I refer you now to the figures for First American National. In June, 1955, their loan and discount position was $82,751,000.

A. That's correct.

Q. June, 1960, its position was $137,952.

A. That is correct.

Q. Pardon me, $137,952,000.

A. I know what you mean.

Q. With a rate of growth during that period of 66.70 per cent?

A. Will you please give me your figure again?

Q. 66.70.

A. I don't want to—that would appear roughly

[fol. 464] Q. And then referring to the June, 1964, position, First American of $185,344,000, with a rate of growth during the latter period, that is 1960, to 1964, of 34.35 per cent.

A. That would appear to be roughly, approximately correct.

Q. I ask you to compare the loan and discount position of First American National Bank for the periods 1955 to 1960, and the period 1960 to 1964 in terms of rate of growth.

A. Now it was approximately 66.7 per cent in the earlier period, and 34.3 in the latter period, is that right.

Q. That's right, sir.

A. In that case, it declined, the rate of growth declined, the rate of growth declined subsequent to 1960 for First American by about 31.7 per cent on the basis of your computations.

Q. All right, sir.

I now refer you to Commerce Union Bank, its position in June, 1955, in loans and discounts was $66,250,000.

A. Yes, that's correct.

Q. In 1960, $76,462,000, with a rate of growth of 35.93 during that period?

A. That appears to be roughly correct. When I say roughly, based on a very quick computation on my part, partial computation.

[fol. 465] Q. Yes, sir, and I refer you now to Commerce Union's loan and discount figure of June, 1964, of $115,191,-000 with the rate of growth between June, 1960 and June, 1964, indicated as 51.7.

A. You say 51.7?

Q. Yes, sir.

A. That would appear to be roughly correct.

Q. And how does Commerce Union's position compare in the two periods, the period 1955 to 1960, as compared to 1960 to 1964, in the rate of growth.

A. On the basis of these figures and loans, Commerce Union's percentage increase during the latter period was—exceeded that of its percentage growth during the early period.

Q. By?

A. By about—just under sixteen per cent on the basis of that date that you have given me.

Q. All of the other banks excluding Nashville Bank and Trust had loans and discounts on June, 1955 of $3,916,000?

A. That is correct.

Q. And on June 1960, $5,314,000 with an indicated rate of growth of 35.7 per cent?

A. That appears to be roughly correct, Mr. O'Malley.

[fol. 466] Q. And the same small banks, all the other banks with the exception of Nashville Bank and Trust, had a loan and discount position in June, 1964, of $7,521,000?

A. That is correct.

Q. With an indicated rate of growth during the 1960 to 1964 period of 41.53 per cent?

A. I'm sorry, would you give me the figure again?

[fol. 467] Q. 41.53 percent.

A. That would appear to be roughly correct, Mr. O'Malley.

Q. How does the rate of growth of these small banks in the period 1955 to 1960 compare with their growth during the period 1960 to 1964?

A. The percentage increase during the latter period ex-

ceeded that of the former period on the basis of the computations you have given me of about 5.8 percent.

Q. At this point, Mr. Futoran, we have Third National Bank's rate of growth slowing down by about 18 percent in the 1960-64 period. Is that correct?

A. I will have to take your statement, Mr. O'Malley. I must apologize. I have been so busy doing figuring here that I have sort of lost track of the overall picture.

Q. Let me go on to the next one, then. Nashville Bank and Trust in June 1955 had a loan position of $8,096,000.

A. That is correct.

Q. In June 1960, a loan position of $17,551,000.

A. Yes, sir.

Q. With a growth rate indicated of 116.78 percent.

A. That would appear to be roughly correct.

Q. And in June 1964 the loan and discount position of Nashville Bank and Trust Company was $22,792,000.

A. That is correct, sir.

Q. With an indicated growth rate for the period of June 1960 to June 1964 of 29.86 percent.

A. Will you please give me the figure again?

Q. 29.86 percent.

A. That would appear to be about correct, Mr. O'Malley.

Q. Can you compare the rate of growth of Nashville Bank and Trust Company in the period 1955 to 1960, with its rate of growth in the period 1960 to 1964?

A. It did not grow as fast proportionately during the last period.

Q. What was the percentage decrease there, Mr. Futoran?

A. The percentage comparison decrease was 87 percent, but I would like to add briefly that it was still a 30 percent increase, Mr. O'Malley. The bank was still growing.

Q. With an 87 percent decrease in the rate of growth in the second period; is that correct, sir?

A. Yes, sir. But on the basis of my figures it was still growing, no matter what period you use.

Q. This was true of all of them. So, in relationship to the rest of the banks with the same figures, its rate of growth has decreased 87 percent?

A. For that particular period of time, yes, sir.

[fol. 469] Q. So we have Third National Bank now decreasing 18 percent; Nashville Bank and Trust decreasing 87 per cent; First American National decreasing 32 percent;

Commerce Union increasing 15.77 percent; and all the other small banks showing a rate of growth increase of 5.83 percent in the latter period, as compared to the earlier——

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Q. I now refer you to Government Exhibit 1003, total deposits of commercial banks in Davidson County, Tennessee.

A. Yes, sir.

Q. I refer you first to the June 1955 deposit figure of Third National Bank.

A. Yes.

Q. $161,645,000.

A. That is correct.

Q. And the June 1960 figure of $217,400,000.

A. Yes, sir.

[fol. 470] Q. Showing a rate of growth in the period 1955 to 1960 of 34.49 percent for the Third National Bank.

A. That would appear to be roughly correct.

Q. And I refer you to the June 1964 deposit figure of Third National Bank of $315,090,000.

A. That is correct, sir.

Q. Showing a rate of growth during the period 1960 to 1964 in deposits held by Third National Bank of 44.94 percent.

A. Will you please give me that figure again?

Q. 44.94.

A. That would appear to be correct; that is roughly correct.

Q. Would you compare the rate of growth of Third National Bank in the period 1955 to 1960 to its rate of growth in the period 1960 to 1964?

A. Its rate of growth during the latter period was greater by a rate of about 10 percent.

Q. I refer you to First American, June 1955 deposit figure, of $211,213,000.

A. Yes, sir.

Q. And a June 1960 figure of $257,900.

A. Yes, sir.

Q. The rate of growth of 22.10 percent during that period.

[fol. 471] A. That looks to be about correct, sir.

Q. Then I refer you to the June 1964 deposit figure for First American National of $371,108,000.

A. Yes, sir.

Q. With an indicated rate of growth in deposits for First American National during the period 1960 to June 1964 of 43.9 percent.

Mr. Minicus: I point out, your Honor, that Counsel is comparing unequal periods. 1955 to 1960 is a five-year period. The second period he is comparing is a four-year period.

The Court: Yes, sir, I am aware of that.

Mr. Minicus: Thank you.

A. That would appear to be correct, Mr. O'Malley.

Mr. O'Malley, when I say correct, I am making a very short-handed computation here.

By Mr. O'Malley:

Q. Will you compare the growth and deposits of First American National in the period 1955 to June 1960, to the rate of growth of deposits during the period June 1960 to June 1964?

A. During the latter period, the rate of growth of the deposits of First American and the basis of these figures did exceed the rate of growth in the earlier period by close to 22 percentage points.

Q. I refer you to Commerce Union Bank, June 1955, a deposit figure of $107,279,000, and a June 1960 deposit figure of $136,668,000.

A. Yes, sir, that is correct.

Q. With an indicated rate of growth in the deposits of Commerce Union Bank during the period June 1955 to June 1960 of 27.39 percent.

A. 27.39?

Q. Yes, sir.

A. That would appear to be roughly correct.

Q. I then refer you to the June 1964 deposit figure of Commerce Union Bank of $202,624,000.

A. That is correct.

Q. With an indicated rate of growth in deposits for Commerce Union Bank during the period June 1960 to June 1964 of 48.26 percent.

A. That would appear to be roughly correct.

Q. Capital City had no deposits—

A. Are you speaking about Capital City or Commerce Union?

Q. Excuse me; Commerce Union. Will you compare the rate of growth of Commerce Union's deposits for the period 1955 to 1960, with its rate of growth in deposits for the period 1960 to 1964.

A. During the latter period the rate of growth was ap- [fol. 473] proximately twenty-one percentage points over the rate of growth during the earlier period.

Q. Capital City had no deposits on June 1955——

A. Mr. O'Malley, would you excuse me just a minute. I want to get some more paper here.

Q. Capital City had no deposits in June 1955.

A. That is correct.

Q. In June 1960 Capital City had deposits of $2,196,000. Is that correct?

A. $2,196,000 is correct, yes.

Q. In June 1964 Capital City had deposits of $7,266,000.

A. $7,266,000, is correct, yes.

Q. With a growth rate during that period of 230.87 percent.

A. Mr. O'Malley, will you give me just about one minute, please? I want to check something here.

Q. Surely.

A. Okay, Mr. O'Malley. Go ahead, sir.

Q. All of the other banks, the smaller banks, with the exception of Nashville Bank and Trust Company, had combined deposits in June 1955 of $5,772,000. Is that correct, sir?

A. That is correct.

Q. And these same banks in June 1960 had total deposits [fol. 474] of $7,929,000.

A. That is correct.

Q. With a rate of growth during the period 1955 to 1960 for these smaller banks of 37.37 percent.

A. That would appear to be about correct, yes, sir.

Q. In June 1964, all of these other banks had total deposits of $12,025,000.

A. That is correct.

Q. Indicating a rate of growth from the period 1960 to 1964 for all of these small banks of 51.66 percent.

A. That would be about right.

Q. I refer you now to Nashville Bank and Trust Company.

A. Yes, sir.

Q. The total deposits in June 1955 of $20,796,000.

A. Yes, that's correct.

Q. Let me retrace my steps here, Mr. Futoran. Will you compare the growth of these smaller banks during the period 1955 to 1960, with their rate of growth during the period 1960 to 1964.

A. The figures were 37.37 and 51.6? Is that correct?

Q. Yes, sir.

A. The banks grew in both periods, but the rate of growth [fol. 475] was greater in the latter period by about 14 percentage points than in the former period.

Q. Finally, the Nashville Bank and Trust Company in June 1955 had $20,796,000 in deposits.

A. That is correct.

Q. In June 1960 it had $38,284,000.

A. That is correct.

Q. Indicating a rate of deposit growth during the period 1955 to 1960 for Nashville Bank and Trust Company of 84.09 percent.

A. Will you repeat that figure?

Q. 84.09.

A. I will accept that, subject to other verification, of course.

Q. In June 1964 Nashville Bank and Trust deposits of $45,471,000.

A. That is correct.

Q. Indicating a rate of growth from its deposit position in June 1960 to 1964 of 18.77 percent.

A. That is roughly correct.

Q. Will you compare the rate of growth of Nashville Bank and Trust Company during the period 1955 to 1960 with its rate of growth during the period 1960 to 1964 in total deposits?

A. The rate of growth percentage-wise, number of percentage points, was 65 percentage points less. But [fol. 476] again, Mr. O'Malley, it was still a growing bank.

Q. Mr. Futoran, then I ask you if this wasn't the only

bank in Nashville that showed a decrease in its rate of growth in the period 1960 to 1964 over the period 1955 to 1960.

A. Mr. O'Malley, I would have to review the statements. I apologize because I have been so busy making figures—

Q. The figures we have here, Mr. Futoran, that we have discussed here is that Third National Bank's rate of growth during the latter period was ten percentage points higher than it was during the period 1955 to 1960. The First American National's rate of growth during the 1960-64 period was 21.8 percentage points higher than it was in the earlier period.

Commerce Union Bank's rate of growth in the 1960 to 1964 period was 20 percentage points which was twenty percentage points higher than it was in the 1955 to 1960 period; and all of the small banks, with the exception of Nashville Bank and Trust, had a rate of growth 14.29 percentage points higher in the period 1960 to 1964, than they had in the period 1955 to 1960, but that Nashville Bank and Trust Company had a rate of growth 66.32 percentage points lower in the period 1960 to 1964 than it had in the period 1955 to 1960.

[fol. 477] A. Mr. O'Malley, in the first place, you keep referring to Nashville Bank and Trust Company as a small bank. It is the second largest state bank in the state. We have about 290 banks in the state.

Q. What is the significance of it being a state bank?

A. I beg your pardon?

Q. What is the significance of it being a state bank?

A. I don't consider it to be a small bank. You keep insisting on using the terminology "small bank." I don't see where the second bank in the state, with assets of around $50 million, is any small enterprise.

Q. It has nothing to do with its being a state bank. It is the twelfth largest bank in the state, isn't it?

A. Yes, in size. Comparing with small banks—but, even there, twelfth out of 290 certainly isn't a small bank in my humble opinion. I just don't see the reasoning there.

It is the twelfth bank even when you take into consideration the big ones.

In direct answer to your question, sir, comparing the rate of growth for the two periods, yes, you are correct.

But Nashville Bank and Trust rate of growth was less than that of the other banks. But I still contend that it was [fol. 478] growing during that period of time and it was in very healthy condition.

Q. And it was the only bank in Nashville that had a decrease in its rate of growth during those two periods, Mr. Futoran.

A. Rate of decrease, if you take into consideration the prior period; but it was still increasing, and I assure you a lot of businesses would love to increase at this rate of growth.

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[fol. 479] By Mr. O'Malley:

Q. I would like you to refer to Government Exhibit 1004, which shows demand deposits, IPC, commercial banks in Davidson County, Tennessee.

A. Yes, sir.

Q. I ask you to look at the figures for June 1960 of Nash- [fols. 480-484] ville Bank and Trust Company.

A. June 1955?

Q. 1960.

A. Oh, I beg your pardon.

Q. For Nashville Bank and Trust Company.

A. All right, sir.

Q. Read it off.

A. June 1960, demand deposits, IPC—Nashville Bank and Trust?

Q. Correct, that's right.

A. $19,981,000.

Q. And what was that figure in June 1964?

A. It was $18,951,000.

Q. That's a decrease, isn't it, Mr. Futoran?

A. That is correct, yes, sir.

Q. Is there any place between June 1960 and June 1964 when Nashville Bank and Trust Company ever got back up to that figure, to the June 1960 figure?

A. No, sir, although it goes up to 19.7 in 1961.

Q. It never grew back up to it, did it?

A. That is correct.

Q. Did any other bank in Nashville lose IPC deposits in that period of time?

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[fol. 485] Q. I'm not sure I got an answer to my question.

A. Would you mind repeating the question.

Q. As to whether or not any other bank in Nashville showed an increase in IPC deposits from June, 1960, to 1964.

A. On the basis of the information as repeated by you to me—

Q. Pardon me, we're talking about IPC deposits.

A. Oh, I beg your pardon.

Q. IPC deposits.

A. All right, just a moment, please. We are talking about a period of 1960 through '64 now, Mr. O'Malley, are we?

Q. Yes, sir, June, 1960, to June, 1964.

A. All right, sir. You are correct.

I'd like to point out though that it didn't lose a great deal of ground. It did lose some, I'll have to—of course that's what the figures show. I would also like to point out though that in June of 1963, it was up to nineteen million dollars.

Q. But not as high as it was in June, 1960?

A. That is correct, yes, sir. That is correct.

Q. Let me ask you though, was there any other bank in [fols. 486-470] Nashville that failed to grow in IPC deposits between June, 1960, and June, 1964?

A. Insofar as I can see by looking quickly, all of the other banks did grow to some extent between June of 1960 and 1964, yes, sir.

Q. Thank you. I refer you now to government Exhibit 1012.

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[fols. 489-502] A. Mr. O'Malley, in answer to your question, sir, the Federal Reserve publishes—I don't know just how many ratios, it might be twenty-five, thirty, thirty-five, I certainly didn't feel I should impose upon the Court presenting all of that information, but most of it would reflect very comparably the fact that NB&T was a very healthy bank at that particular time, and the reason I picked 1962 was because of the fact that we did not have complete infor-

mation from the banks relative to 1963, which would have been the last full year for which we had this type of information since in 1964, NB&T was merged with Third National Bank.

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[fol. 503] Q. GX-1012—"Total Loans to Total Assets."

A. Yes, sir.

Q. I ask you which bank in Davidson County had the largest ratio of loans to assets?

A. Third National Bank.

Q. And which had the second largest ratio?

A. First American National.

Q. And the third largest?

A. Commerce Union.

Q. Of all the banks listed in Davidson County, I ask you which had the lowest ratio of loans to assets.

A. Nashville Bank and Trust Company, sir.

Q. Do you attach any significance to the fact that the Third National Bank was lending its funds as compared to its assets at nine percentage points more than Nashville Bank and Trust Company?

A. Well, this would indicate that a higher percentage of the total resources of the Third National Bank were engaged [fol. 584] in loans.

* * * * * * *

Q. I believe I asked whether you considered that this was significant, Mr. Futoran.

A. It would show that in this particular ratio, yes, sir, that on this particular item, in comparing these two particular banks, there would be a definite difference between these two ratios.

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[fols. 505-520] A. The purpose of this was to show the significance insofar as the evolvement of business is concerned to the total operation of the Nashville Bank and Trust Company. In other words, for a bank its size that had a very significant portion—at least a good part—of its money coming from the trust department revenues.

Q. Conversely, Mr. Futoran, doesn't it also indicate that its commercial banking portion of its business was less important relative to the operation of that bank than any other bank that you have listed on this chart?

A. Mr. O'Malley, yesterday—and I guess today, if you will excuse me—you are accentuating the negative.

Q. Can you answer the question, Mr. Futoran? and then you can accentuate the positive.

A. Yes, sir, I will answer it. The trust department revenue found that there was a good income, or else it happened to know there was a good enough profit. By way of comparing the ratio of the loans to total assets, it is obvious that the ratio within the Nashville Bank and Trust Company—that is, the banking aspects of it as distinguished from the trust department—was not as high a ratio proportionately as the other banks. Yes, sir, that's true.

* * * * * * *

[fol. 521] Q. I believe your testimony, Mr. Futoran, was that the combined lending limit of Third National Bank and Nashville Bank and Trust Company, prior to the merger, [fols. 522-523] was in excess of that of Third National Bank after the merger.

A. That is correct, sir.

* * * * * * *

[fol. 524] Mr. O'Malley: I want to know if he knows of any loan that the Nashville Bank and Trust Company ever made that was equal to $1,125,078, which he has listed as its legal lending limit on June 30, 1964.

[fol. 525] The Court: All right.

The Witness: No, sir, I do not.

By Mr. O'Malley:

Q. Mr. Futoran, I refer you to your Exhibit GX-1015.

A. Yes, sir.

Q. To the total loans of commercial banks in Davidson County, Tennessee. I refer you to the data under October 1, 1964.

A. Yes, sir.

Q. Specifically as to the Third National Bank. I refer

you to the table under June 30, 1964, and specifically to the Third National Bank and Nashville Bank and Trust Company.

A. Yes, sir.

Q. Now, isn't it a fact, Mr. Futoran, that on October 1, 1964, the Third National Bank had more money at work in loans than both banks combined did prior to the merger, without respect to a lending limit?

A. Sir, I started to make some computations. I wonder if I could trouble you to please restate your question?

Q. Certainly. I asked you if on October 1, 1964, subsequent to the merger, it isn't a fact that Third National Bank had more money at work in loans than the combined total of the Third National Bank and Nashville Bank and Trust [fols. 526-531] prior to the merger on June 30, 1964?

A. That is correct, sir; yes, sir, that is correct.

* * * * * * *

[fol. 532] Q. Thank you, sir. I now refer you, Mr. Futoran, to your Exhibit GX-1023.

A. Yes, sir.

Q. Mr. Futoran, in compiling this document, did you make any investigation as to how any of the Nashville banks determined the category of officer?

A. In these cases the banks fill out the forms, or at least they are required to, according to the directions of the regulatory agencies. And the statement regarding that is, "Compensation for personal services of all officers except building department officers."

They distinguish this from employees, excluding, of course, dining room and cafeteria employees and so on—I am sorry; including dining room and cafeteria employees, [fol. 533] but exclusive of building department employees.

Q. Did you yourself try to make a determination as to whether one bank has a more liberal officer promotion policy than another? Or did you determine the qualifications of officers?

A. I did not get into the subject, sir, of checking the qualifications or aspects—in that line, no. I checked my figures as they were given on these reports from official documents.

Q. Did you make any attempt to compare the average

salaries of comparable officers in the various offices of the banks in Nashville?

A. No, sir. Again I relied on the statistics as provided by the respective banks themselves on these official reports.

Q. Did you take into consideration the fact that Commerce Union has seven branches out in the county, and in seven surrounding counties?

A. Well, I am fully aware of that fact, yes, sir. But I again listed the information. I didn't want to do anything to the figures other than list them as they were reported. These were official reports.

Q. If there was a salary differential, then, between the city and county offices of Commerce Union, it would not be reflected in here?

[fol. 534] A. If such were the case, that would be true, yes, sir.

Q. In reading this chart, for example, with Commerce Union, is the total number of officers and employees 510 or is it 415? Are there two separate and distinct classifications you have there?

A. For the employees, there are 415 recorded, and 95 officers for Commerce Union for 1962—at least, as contained on the report.

Q. They are two separate categories? The 415 does not include the 95?

A. That is correct, sir, as I understand it from the report.

Q. I would like to go over to the employees' salaries.

A. Yes, sir.

Q. I ask you if this chart does not reflect the fact that the only bank in Davidson County which paid its employees a lesser salary than Nashville Bank and Trust was Capital City?

A. On an average basis, that is correct, sir.

Q. And this, despite the fact that Nashville Bank and Trust resources were approximately five times that of any of the banks listed below Commerce Union?

A. The answer is, yes, sir.

* * * * * * *

[fol. 535] Q. Now, I refer you to this chart labeled percentages of growth of total deposits from June 1955 to June, 1964, and of net income after taxes from 1955 to

1963, of Nashville Bank and Trust Company, and the big three banks and annual net income after taxes of Nashville Bank and Trust Company.

Did you prepare the model for this exhibit, the model chart for this exhibit?

A. Yes, sir, I did.

Q. Did you make all of the projections?

A. Yes, sir, I did.

Mr. Mincus: I make object to that——

The Witness: I'm sorry, there was just one projection, in answer to the statement.

By Mr. O'Malley:

Q. Now this chart, Mr. Futoran, does show that from 1960——

A. 1960, you say?

Q. Yes, sir.

A. Yes, sir.

Q. To 1963, that there was a leveling off of income of Nashville Bank and Trust Company, is that correct?

[fol. 536] A. Slight rise in '61 and '62, and slight decline in '63, yes, sir.

Q. Now, Mr. Futoran, I'd like to ask you the basis of your projection of the earnings of Nashville Bank and Trust Company for the year 1964.

A. I divided, took a ratio and by 7.5 into twelve, and applied that to $341,000, and while I arrived at a figure of close to $545,000, that chart, I believe, goes up to $540,000.

Q. Why didn't you put it up to $545,000, Mr. Futoran?

A. A little conservatism.

Q. Did you take into consideration the fact there might be changes in economic conditions by the end of the year, 1964, which would affect the earnings of that bank?

Mr. Minicus: Objection, Your Honor. There's no foundation laid for any change in economic conditions. If counsel will establish them, I think the witness will know what he's talking about.

The Court: Well, I'll let him answer it.

The Witness: I'm sorry, I didn't hear Your Honor.

The Court: Go ahead and answer.

By Mr. O'Malley:

Q. You can answer it.

[fol. 537] A. All right. Would you please restate it?

Q. Yes. I said did you take into consideration the possibility that any economic changes in 1964 might have stopped this straight-line growth?

A. Yes, sir, I also took into consideration the fact that there seemed to be no indication that it would stop plus the fact that according to that dotted line, that is a theoretical projection, that is not a statement that that is not what would have been. That is theoretical, and I admit it is such.

Q. Now, Mr. Futoran, yesterday, you testified that a period from '60 to '63 was not a valid basis for making a projection.

A. Projection or comparison, Mr. O'Malley.

Q. All right, comparison, or it was not a valid period in which to consider the growth of a bank, is that right?

A. I was speaking in terms of comparisons with other banks over a long-term period.

Q. Let's talk just about this bank.

A. All right, sir, it was—there was a general—over the entire period of time, there was a general rise. You were coming into your Christmas vacation—that is Christmas expenses and so on, and insofar as Nashville itself was concerned, it seems to have been an expanding economy [fol. 538] from what I've seen and even contained in the application to merge, and the exhibits.

Q. Do you know when the Nashville economy started expanding, Mr. Futoran?

A. I'd have to recheck the figures on that.

Q. Does 1960 seem like a fair date?

A. I'd have to recheck the figures on that, Mr. O'Malley.

Q. Would you concede that 1961 would be a fair date?

A. Again, I would have to check my figures before I would give an answer to that question.

Q. 1962?

Mr. Minicus: Objection, Your Honor, he's badgering the witness again. The witness says he wants to check his figures before he answers to when the economy started to expand. He doesn't know.

The Court: Let him answer.
The Witness: I don't know at this time, sir.

By Mr. O'Malley:

Q. I'm going to ask you if the economy started growing at the beginning of 1963?
A. Mr. O'Malley, the reason that I say I don't know, I want to recheck on the specific factors involved on the Nashville economy.
[fol. 539] Q. Mr. Futoran, you have represented yourself as being a qualified economist in this case, and I ask you if it hasn't been a general knowledge of this country and since you have stated of Nashville, that Nashville started on a generally rapid growth in 1960?

Mr. Minicus: Objection, Your Honor, to counsel testifying.
The Court: No, it's cross examination.
Mr. Minicus: He said a matter of general knowledge; it isn't a matter of my knowledge.
The Court: He said isn't it a fact that the expansion started at the end of 1960, I'll let him answer that.
The Witness: Well, Mr. O'Malley, will you give me just a moment, sir?

By Mr. O'Malley:

Q. Yes, sir.
A. The Nashville economy certainly as reflected by the banks in Nashville has in general been a growing economy for the past ten years.
Q. I'm asking you about the period of rapid economic expansion.
A. There I——

Mr. Minicus: I don't know what he means "rapid economic expansion," Your Honor. I think these terms have [fol. 540] to be defined.
The Court: Well, if the witness wants any more definite question in regard to what you mean by expansion—do you understand what he means by period of rapid expansion of the economy?
The Witness: I do, sir, but at first I wasn't sure whether he was speaking nationally or locally. If he's speaking

locally, I can answer the question, sir. If he's speaking of Davidson County, I believe I can answer his question.

By Mr. O'Malley:

Q. Very well, I would appreciate your answering the question for Davidson County.

A. It has been expanding over the last ten years. There has been a more rapid expansion since 1958. Now it would be either 1960 or '58.

Q. You are certain about 1960?

A. That's correct, and I believe back as far as '58 it started to show a good rate of expansion, yes, sir.

Q. Do you know what the economy of the country was in 1958? Was it rising, was the economy rising in 1958, or was it in a recession?

A. I think it had declined slightly nationally, but, Mr. O'Malley, I don't attempt to carry a flock of figures around in my head, sir. I don't mean to be disrespectful, but these [fol. 541] are matters of statistics that I would want to refresh my memory on as to given years.

Q. I was referring to your general economic knowledge, Mr. Futoran.

So it was a larger period of growth starting in 1960, so from 1960 to 1963, in Nashville Bank and Trust Company didn't participate in that growth in income?

A. Mr. O'Malley, if you are just going to take a short period——

Q. That's all I'm taking, Mr. Futoran, I'd like an answer.

A. From '60 to '63, while there was a slight decline from '62 to '63, on the part of Nashville Bank and Trust, it was a small one. From 1960 to '61, there was an increase, and from '61 to '62, there was an increase.

Q. Now, Mr. Futoran, do you believe that the earnings of the seven and a half month period are valid basis for projecting on into the future for the balance of the year?

A. I would believe so, on the basis of a theoretical projection. I don't say that that is what would have happened.

Q. I see. Now, if the earnings of seven and a half months are a basis for putting up earnings like this, wouldn't the earnings for a year be better for putting up a projection?

[fol. 542] A. If we had the full year?

Q. Yes, sir.

A. Yes, sir, although that would not be a projection; that would be an actual plotting of the data.

Q. I want you to take 1960 and I wonder if you could tell us where this bank was supposed to be in 1961?

Mr. Minicus: I don't think that's a fair assumption; we have the actual figures for 1961, and he's plotted them accordingly. How can the witness assume where he would be in 1961 if he knows where he was.

Mr. O'Malley: Your Honor, I'm trying to show the invalidity of this projection.

Mr. Minicus: Let's restrain ourselves to the projection, not the other years.

The Court: Explain that; I don't understand it.

Mr. O'Malley: I suggest to the Court if seven and a half months is a valid basis for projecting up in a straight line, that the same method of projection applied to 1960, based on 1959 would indicate that they are going to earn this much in 1961. I would suggest on that basis alone that seven and a half months basis is insufficient basis for projecting the earnings of the bank for a short period of time.

The Court: I think you can ask him that if it was in- [fol. 543] sufficient period.

Mr. O'Malley: He has indicated that it was a sufficient period, and I have asked him if seven and a half months was sufficient, and carry that line straight up, and have reliability as evidence, I suggest to him that he take the 1959 and project them through 1961 so that we will see, according to his figures what this bank should have been making in 1961, but it wasn't.

The Witness: Of course you have the actual figures there.

The Court: Go ahead and let's see what he answers.

The Witness: Well, Mr. O'Malley, the purpose of the dotted line is to show the indicated movement, and the economy in Nashville was expanding as is obvious from the other banks. You would have ahead of you the holidays, and as far as the facts were available to me, I didn't see any reason why it should decline. It was on the move.

By Mr. O'Malley:

Q. You are still not answering my question. Can you give me some idea what this was, how this would come out?

Mr. Minicus: I don't think that question is——
The Court: I'll let him answer.
[fol. 544] Mr. Minicus: Pardon me, sir?
The Court: Yes, let him answer.
The Witness: If we had projected it?

By Mr. O'Malley:

Q. Yes, sir, you have the figures, I believe, from—whatever these years are supposed to be, '58, '59, and for this period right here, and I want to see where you would come out on a projection using the same basis?

Mr. Minicus: I would submit, Your Honor, that the projection would not even be comparable. He has a twelve month period; he wants to project for another twelve month period.
Mr. O'Malley: I object to Mr. Minicus testifying.
The Court: He's arguing, we don't have a jury.
Mr. Minicus: He has almost eight months of the year, the projection is only then for one-third of the year.
The Court: I understand.
Mr. Minicus: Instead of here, it would be twelve months, that would be a half a year, and you wouldn't have the same solid basis for projection.
Mr. O'Malley: I'm asking him to take half of a two-year period and run it up the other half of the two-year period.
[fol. 545] The Witness: The difference is in one case I have a seven and a half month period, and you want to work it on a two-year period.
Mr. O'Malley: Yes, that's right, based on the growth from here to here. I want to know what this would be according—using the same basis of projection.
The Witness: Is that from 1959 to 1960?

By Mr. O'Malley:

Q. Yes, I believe that is from '59 to 1960, your growth figure there, and then I want, using the same basis of projection you used in 1964, to tell me where this bank would have been in 1961.

A. Mr. O'Malley, I'm having trouble understanding precisely what you want me to do. What figures do you want me to put together here? I'm not quite clear, sir.

I mean in one case I had seven and a half months, and I could project it to a year. Now I'm not sure of what figures you want me to put together and how you want me to put them together.

Q. You have your growth rate from '59 to 1960, do you not, Mr. Futoran?

A. No, let's get down to cases.

Q. And you have your earnings——

A. I beg your pardon?

[fol. 546] A. Yes, sir.

Mr. Minicus: Will you let him answer your question first, please, before you give him another one?

The Witness: We have here an increase, the figure in 1959, the net income after taxes for Nashville Bank and Trust was $184,000. In 1960, it was $350,000.

Now what do you want me to do, sir?

By Mr. O'Malley:

Q. I want you to tell me what it would be in 1961, according to those figures at that rate of growth.

Mr. Minicus: Might I suggest, Your Honor, that this is a terrific waste of everybody's time?

The Court: It is taking a lot of time. I don't see that it's too important. It's just an arbitrary extension.

Mr. Minicus: That's right. If you start down here and you have a projection, it is a straight line of increase.

Mr. O'Malley: That's right, Your Honor, and I want to show the fallacy of this projection.

The Court: If he ran it in a straight line, it wouldn't follow what actually happened in each year?

Mr. O'Malley: That's right.

The Court: Correct.

[fol. 547] Mr. O'Malley: May I suggest to the Court that that doesn't present what actually happened?

The Court: I can see that without his going through this calculation.

Mr. O'Malley: All right, fine. Thank you, Your Honor.

By Mr. O'Malley:

Q. Mr. Futoran, do you know whether the Nashville Bank and Trust Company was on a cash or an accrual method of accounting?

A. (No answer.)

Q. Do you know, Mr. Futoran?

Mr. Minicus: The witness has testified several times he's not an accountant, Your Honor.

The Court: Well, I'll let him answer this particular question to see what he has in mind.

The Witness: I don't recall looking for that information, sir, no.

By Mr. O'Malley:

Q. You don't know whether it was on cash or accrual?

A. No, sir, I don't. Most banks are on accrual method; at least that's the recommended method by NABAK.

Q. You don't know that that is true of Nashville Bank and Trust Company?

A. That's true, sir, I don't know.

[fol. 548] Q. In drafting this chart you don't know, then, whether the earnings figure as of August contained any provisions for year-end adjustments?

A. Well, I know there were some adjustments made at the time of the effectuation of the merger.

Q. I am talking about year-end adjustments. I am talking about a projection, Mr. Futoran. The earnings you have listed here are $341,000. Do you know whether or not those earnings reflected an accrual for expenses that would have occurred later on in the year?

Let me put it a different way——

A. I heard your question, Mr. O'Malley. I am trying to recall. I have been handling so many tables and charts and facts and figures, it is a litle difficult for me to try to recall all of the details. I haven't quite prepared that, to be frank with you.

I believe there have been adjustments at the end of the years preceding that; but I would have to check the data that we have in order to give you a more factual answer, Mr. O'Malley.

Q. Do you know whether this $341,000 reflected a prorata cost for transfer to bad debt reserves?

A. As I recall, sir, that net income after taxes—may I just check something a moment?

Q. Certainly.

[fol. 549] Mr. Minicus: These are complex accounting problems. I don't think the witness is qualified to answer these questions.

The Court: It might have something to do with his making this projection.

Mr. O'Malley: I can assure the Court that it does.

Mr. Minicus: There might be a foundation laid for it.

Mr. Farris: If the Court please, there is another objection to the counsel breaking in to come to the witness's rescue any time he thinks he needs help.

Mr. Minicus: I maintain my right to make an objection.

The Court: Whether he is doing that, or making a valid objection, it is hard to judge.

Mr. Minicus: These are accounting questions and the witness says he is not an accountant. That is the objection.

The Court: Apparently he doesn't know, then. Can't we go to something else?

The Witness: Your Honor, I do have an answer here.

The Court: All right, go ahead and answer it.

[fol. 550] The Witness: According to the instructions for the preparation of these reports by the insured state banks —and this is published by the Federal Deposit Insurance Corporation—the net income after taxes would have come after items such as recoveries and transfers to valuation reserves and profits, losses charged to offices, to valuation reserves, and would come prior to dividends on capital—that is, cash dividends declared on common stock.

By Mr. O'Malley:

Q. Basically you do not know whether any provision was made here for transfer to bad debt reserve from these earnings?

A. No, sir, I do not know at this moment.

Mr. O'Malley: Will the Court grant me just one moment, please?

By Mr. O'Malley:

Q. I refer you to Government Exhibit No. 70, Mr. Futoran, and also No. 71.

The Court: What is the number?
Mr. O'Malley: 70 and 71, Your Honor.

By Mr. O'Malley:

Q. No. 70 is the report of income and dividends for the calendar year 1963 for the Nashville Bank and Trust Company. I draw your attention under 5, Mr. Futoran, 5(b)(2), [fol. 551] and ask what that reflects for the year 1963.
A. Transfers to valuation reserves.
Q. How much?
A. $200,000.
Q. Do you understand that the valuation reserve is the bad debt reserve in other terms?

Mr. Minicus: Objection.
The Court: Because he isn't an accountant?
Mr. Minicus: An accounting question.
The Court: Strictly, I suppose that's correct. But, as a matter of information, do you know or not?
The Witness: Sir, I am not sufficiently acquainted with this field to speak on that.
The Court: All right.

By Mr. O'Malley:

Q. But that projection of $200,000 does appear in the 1963 report; is that correct?
A. Yes, sir, it does.
Q. I ask you to look at the final statement—I believe it is dated August 17, 1964—of Nashville Bank and Trust Company and ask you to refer to 5(b)(2). I ask you to tell me how much they transfer to valuation reserve there.
A. It says, "None."
Q. Do I gather from your prior answers then, too, Mr. [fol. 552] Futoran, that you don't know whether there was an accrual to take care of the Christmas bonus which was not required?

Mr. O'Malley: I believe that's an evidence, Your Honor, in one of the Government's exhibits.

A. No, sir.

By Mr. O'Malley:

Q. So, there were expenses that would have come out of this if the prior year's experience was any criterion, which would have come out of that earnings figure had that continued to the end of the year. Is that correct, Mr. Futoran?

Mr. Minicus: The witness has just testified he didn't know.

The Court: I think that's corect.

Mr. O'Malley: Very well, Your Honor.

By Mr. O'Malley:

Q. With regard to this chart also, Mr. Futoran, I assume that you have no knowledge as to whether any accrual was made for Davidson County taxes for that year?

A. My hesitation, sir, is that I have seen that data; but I don't recall at the moment.

Q. You have no present knowledge?

A. No, sir.

Mr. O'Malley: Your Honor, if I may, I would like to [fols. 533-555] introduce for identification at this time Intervenor's Exhibit marked INX-100.

The Court: Let it be marked for identification.

(Intervenor's Exhibit No. 100 was marked for identification.)

The Court: Do you expect to get this in evidence at this point?

Mr. O'Malley: Not necessarily, Your Honor.

The Court: What is the purpose of this at this time?

Mr. O'Malley: Your Honor, I want to question this witness on the periods between the December 1963 figures and the June 30, 1964, figures, as to the deposits and assets of Nashville Bank and Trust Company. This is an intervening call report which has not been introduced into evidence by the Plaintiff.

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[fol. 556] Redirect examination.

By Mr. Minicus:

* * * * * * *

[fol. 557] Q. Again, sir, your attention is directed to the total assets for 1955, June, of the Nashville Bank and Trust Company. What were they?

A. $24,113,000.

Q. Just moving back a couple of years from Mr. O'Malley's period to 1958, what were the total assets in June of 1958?

A. In round numbers, 33.8 million dollars.

Q. Can you tell us, Mr. Futoran, what percent of increase that comes to for the earlier period?

A. 40.2 percent.

Q. Now, sir, you have testified that for 1958 the total assets of Nashville Bank and Trust Company were $33,806,000. What were they for 1964?

A. They were $50,860,000.

Q. Can you tell us, Mr. Futoran, what percent of increase in assets that signifies from 1958 to 1964?

A. 50.5 percent.

Q. Then in the later period Nashville Bank and Trust Company increased its assets at a greater rate than it did in the earlier period. Is that correct, sir?

A. That is correct, sir.

* * * * * * *

[fol. 559] By Mr. Minicus:

Q. Just once more, Mr. Futoran: Mr. O'Malley found, taking the period 1959 and relating it to 1964, that Nashville Bank and Trust Company was the only bank in the city whereat demand deposits had diminished. I ask you, sir, to look at demand deposits for June of 1962. What were they at that time?

The Court: What exhibit is that?

Mr. Minicus: I am sorry; this is Government Exhibit 1004.

[fol. 560] By Mr. Minicus:

Q. What were the demand deposits at Nashville Bank and Trust Company in June 1962?

A. $17,638,000.

Q. And on the last call date before the merger, what were the demand deposits of Nashville Bank and Trust Company?

A. In June 1964 it was $18,951,000.

Q. Showing an increase in that brief two-year period of what amount of money, Mr. Futoran?

A. $1,313,000.

* * * * * * * *

Q. Mr. O'Malley had you testify that Nashville Bank [fol. 561] and Trust Company never had a loan they made up to the full twenty-five percent. I ask you, Mr. Futoran, if Nashville Bank and Trust Company ever made a loan in excess of the fifteen percent legal limit?

A. Yes, sir.

* * * * * * *

The Witness: Between March 13, 1961, through July 6, 1964. If it please the Court, this is in answer to Inter- [fol. 562] rogatory No. 6, Your Honor.

By Mr. Minicus:

Q. What is the sum of the largest loan that Nashville Bank and Trust Company made with relation to those incidents?

A. One million dollars.

Q. Do you know at the time set forth here—December 20, 1963—what the legal loan limit would have been at fifteen percent?

A. Yes, sir, I do. It would have been $654,000.

[fols. 563-565] Q. So how much in excess of the fifteen per cent loan limit was the largest loan exceeding the fifteen per cent loan limit?

A. $346,000.

Q. Thank you, sir.

* * * * * * *

[fol. 566] Recross-examination.

By Mr. O'Malley:

Q. Mr. Futoran, you have been talking here about the validity of the statistical period of ten years and I'm just curious if that's the case why didn't you go back to 1954 instead of 1955?

A. I was figuring on the inclusive aspects of it. In other words, 1955 by way of period of time, through 1964, would give us ten points along the way.

Q. But 1954 would have been two years before Mr. Hackworth became president of that bank, so you cut it down to nine years, and you got the year before Mr. Hackworth became president, and then the following years, is that correct?

A. I believe he came in about that time, as I recall it, yes, sir.

* * * * * * *

[fol. 567] Q. Now, Mr. Futoran, one question on Exhibit 1004.

A. What exhibit?

Q. 1004, GX-1004, and I ask you, Mr. Futoran, without regard to any period of time, take the whole ten-year period, and I ask you when Nashville Bank and Trust reached its high point in demand deposits.

The Court: Ask him what?

Mr. O'Malley: I said without regard to any period of time, take the whole study, and I asked Mr. Futoran to identify when Nashville Bank and Trust reached its high point in demand deposits.

The Witness: It reached its high point in June, 1960.

* * * * * * *

[fols. 568-569] WILLIAM F. EARTHMAN, a witness called to testify by and on behalf of the Plaintiff, after having first been duly sworn, was examined, and testified as follows:

Direct examination.

By Mr. Weinbaum:

* * * * * * *

Q. And what is your occupation?
A. Banker.
Q. Can you state the name of the bank and the capacity in which you serve this bank?
A. Commerce Union Bank as president.

* * * * * * *

[fol. 570] Q. What is the ranking of your bank by size in the Nashville-Davidson County community?
A. Third.
Q. Is your bank a state or a national bank?
A. State bank.
Q. Is it a member of the Federal Reserve System?
A. Yes, sir.
Q. What is the relative size of your bank in the State of Tennessee among state banks?
[fol. 571] A. It's the largest.
Q. How many banking offices did Commerce Union maintain, Mr. Earthman, on or about the first of the year, 1964?
A. Twenty.
Q. And how many of these offices were in Davidson County?
A. Twelve.
Q. And as to the other offices, were these acquired prior to the passage of the Tennessee State law prohibiting branching beyond county lines?
A. Yes, sir.
Q. In your capacity as president of Commerce Union Bank, have you been able to observe whether or not there has been a rivalry for business between your bank and other banks with offices located in Davidson County?

A. Yes, sir.

Q. And is there a rivalry in fact for commercial banking business between your bank and any of the other banks with offices located in Davidson County?

A. Yes, sir.

Q. Would you tell the Court, Mr. Earthman, whether or not in late 1963 and early 1964, Nashville Bank and Trust Company was one of those banks located in Davidson County that Commerce Union considered a rival for certain [fol. 572] types of commercial banking business?

A. For certain types of business, yes.

Mr. Weinbaum: At this time, with the permission of the Court, I would like to read from Government Exhibit 540, now in evidence, which is an Interrogatory directed by the Plaintiff to Defendants, and the answer to this interrogatory.

By Mr. Weinbaum:

Q. Mr. Earthman, I would like to read to you at this time a list of the services which Third National Bank and Nashville Bank and Trust Company have indicated were offered by both institutions during the period January 1, 1961, through the time of the merger August 18, 1964, and as I go through this list, I would like for you to indicate whether or not your bank offered the same services.

First in deposit functions, checking account.

A. Yes.

[fol. 573] Q. Savings accounts?

A. Yes.

Q. Automatic savings accounts?

A. Yes.

Q. Certificates of deposit?

A. Yes.

Q. Christmas Club?

A. Yes.

Q. Bank-by-mail?

A. Yes.

Q. Night depository?

A. Yes.

Q. Drive-in windows?

A. Yes.

Q. Certified checks?

A. Yes.
Q. As a depository for the following: Court funds?
A. Pardon me?
Q. Depository for court funds?
A. Yes.
Q. School funds?
A. Yes.
Q. Social Security depository receipts?
A. Yes.
Q. State and county funds?
[fol. 574] A. Yes.
Q. State sales tax?
A. Yes.
Q. Withholding tax?
A. Yes.
Q. Under the Loan Classification, accounts receivable?
A. Yes.
Q. Appliances?
A. Yes.
Q. Automobiles?
A. Yes.
Q. Boats, motors, and trailers?
A. Yes.
Q. Buses?
A. Yes.
Q. Commercial?
A. Yes.
Q. Commodity loans?
A. Yes.
Q. Construction loans?
A. Yes.
Q. Floor-plan financing for dealers?
A. Yes.
Q. Education loans?
[fol. 575] A. Yes.
Q. Equipment loans?
A. Yes.
Q. G.I. farm and home loans?
A. Yes.
Q. FHA home loans?
A. I might clarify that we do not use the FHA—we have our own, but it was the same idea.

Q. How about FHA mortgage loans? Would the same apply?
A. Yes.
Q. That you have a similar——
A. No; mortgage loans, we did have FHA to a limited extent on a warehousing basis.
Q. Home modernization?
A. Yes.
Q. Insurance premium?
A. Yes.
Q. Life insurance?
A. Yes.
Q. Lines of credit?
A. Yes.
Q. Medical and dental expenses?
A. Yes.
Q. Mortgages?
[fol. 576] A. Yes.
Q. Personal loans?
A. Yes.
Q. Property improvement loans?
A. Yes.
Q. Real estate loans?
A. Yes.
Q. Small business loans?
A. Yes.
Q. Tax payments?
A. Yes.
Q. Warehouse receipts?
A. Yes.
Q. Mortgage servicing?
A. Yes.
Q. Tractor-trailers?
A. Yes.
Q. Trucks?
A. Yes.
Q. Mortgage warehousing?
A. Yes.
Q. Trailers?
A. Yes.
Q. Under the Safety Deposit functions, did you offer lockboxes?
[fol. 577] A. Yes.

Q. Valuables storage?
A. Yes.
Q. Under the Investments category, did you participate in bond purchases?
A. Yes, we did.
Q. Bond sales?
A. Yes.
Q. Investment counselling?
A. Yes.
Q. Under other services, did you provide bank drafts?
A. Yes.
Q. Bills of lading?
A. Yes.
Q. Cashier's checks?
A. Yes.
Q. Customer parking?
A. Yes.
Q. Draft collection?
A. Yes.
Q. Guarantee signatures?
A. Yes.
Q. Industrial development assistance?
A. Yes.
[fol. 578] Q. Letters of credit?
A. Yes.
Q. Letters of introduction?
A. Yes.
Q. Note collection?
A. Yes.
Q. Savings bonds?
A. Yes.
Q. Supplying credit information for customers?
A. Yes.
Q. Check collection?
A. Yes.
Q. Credit life insurance?
A. Yes.
Q. Traveler's checks?
A. Yes.
Q. Wire fund transfers?
A. Yes.
Q. Business assistance?
A. Yes.

Q. Financial advice?

A. Yes.

Q. Committeeships? I would assume, Mr. Earthman, and this is subject to correction, that this would mean that certain of the officers of a bank participated on certain [fol. 579] committees in the community.

A. Did we do that?

Q. Yes.

A. Yes.

Q. You would not offhand know whether committeeships is a particular category of service offered by a bank?

A. Well, I think it is a very necessary thing for the bank officials and the employees to actively participate in the civic affairs of the community.

Q. What I meant, Mr. Earthman, was: The term "committeeships" ordinarily listed among services would not have any technical banking meaning, such as draft collection, would it?

A. No, but it is a necessary thing.

Q. Assuming that committeeships means what we have just stated we believe it means, you feel that this is important?

A. Yes.

Q. And that you participate in such?

A. Yes.

Mr. Weinbaum: Now, with Your Honor's permission, this same Interrogatory indicates those same services were offered by the Third National Bank, which were not offered by the Nashville Bank and Trust Company for the time period involved.
[fol. 580] I would like to ask Mr. Earthman if his bank offered those services.

By Mr. Weinbaum:

Q. Under Deposit Functions, Mr. Earthman, did Commerce Union offer special checking accounts?

A. No.

Q. Did Commerce Union offer savings certificates, five-year, four percent?

A. No, sir.

Q. Did Commerce Union offer night transit?

A. No.

Q. Payroll preparation?
A. Yes.
Q. Account reconciliation?
A. Yes.
Q. Private and commercial airplane loans?
A. Yes.
Q. Compact home loans?
Q. Credit by check?
A. No.
Q. Discount trade notes?
A. Yes.
Q. Mobile home loans?
A. Yes.
[fol. 581] Q. Vacation loans?
A. Yes.
Q. Term loans?
A. Yes.
Q. Purchase of dealers' retail paper?
A. Yes.
Q. Excess loans for correspondents?
A. Yes.
Q. Correspondent bank facilities?
A. Yes.
Q. Bond coupon collection?
A. Yes.
Q. Securities custody?
A. Yes.
Q. Municipal financing?
A. What do you mean by municipal financing?
Q. Underwriting municipal securities of any sort.
A. We do not have a bond department in our bank, if this is what you are referring to.
Q. Might there be some other meaning to the term "municipal financing"?
A. Well, it could mean that we lend on a short-term basis to the local communities in which we operate, such as the City of Nashville—which all banks participate in.
Q. Do you do this type——

[fol. 582] Mr. Hooker: Excuse me, Your Honor, but if Mr. Weinbaum doesn't know what is meant by that term as it is used by the Third National Bank, I don't know how

he can find out what it is from Mr. Earthman. So we object to that.

The Court: I will let the answer stand.

By Mr. Weinbaum:

Q. Mr. Earthman, do you do any kind of financing which in your judgment might come under the broad term "municipal financing"?

A. By all means, yes, sir.

Q. Can you explain to the Court what this is?

A. Well, we are involved, as I just detailed, in short-term lending to municipalities in which we operate, Nashville and the other communities. We assist in the purchase of industrial revenue bonds, which are bonds which the communities issue in order to build the plants that are leased to private enterprise.

We work with the water and sewer authorities on lending arrangements in all facets of municipal financing—if this is what we are speaking of.

Q. Thank you. Certain other services which Third National Bank offered and Nashville Bank and Trust Company did not offer, which I would like to cover, are: Did Commerce Union provide customer conference rooms?

[fol. 583] A. Yes.

Q. Exchange foreign money?

A. Yes.

Q. Remittance of foreign funds?

A. Yes.

Q. Provide statistical information?

A. Yes.

Q. Stock drafts?

A. Yes.

Q. Transfer of foreign funds?

A. Yes.

Q. Analyzing financial statements for customers?

A. Yes.

Q. Bank wire service?

A. Yes.

Q. Electronic computer service?

A. Yes.

Q. Centrex telephone equipment?

A. No.

Q. Watts line service?

A. Yes.

Q. Freight payment plan?

A. Yes.

Q. Clearing facilities for correspondents?

A. Yes.

[fol. 584] Q. In connection with those services you have just mentioned as being provided by Commerce Union, which are also provided by Third National Bank, would you attach differing degrees of significance to these services?

A. Yes, I would.

Q. Would you please comment on your mobile home financing. Is that deemed important to your bank?

A. In my bank it is a very important item. We have a large volume of mobile home paper on our books, and we do extensive business all over the Southeast in the mobile home field.

Q. How about account reconciliation?

A. Comparing that with the mobile homes—is this what you are doing?

Q. The relative importance in your bank.

A. I would place that down the list of importance.

Q. How about vacation loans?

A. Not too important.

Q. The purchase of dealer retail paper?

A. Very important.

Q. Exchange of foreign money.

A. Not too important.

Q. Remittance of foreign funds?

A. Not too important.

Q. Your correspondent bank facilities?

[fol. 585] A. Important.

Q. Were substantially all of the services offered by Commerce Union Bank, Mr. Earthman, the ones that you have indicated were offered by your bank—were these solicited or advertised in Davidson County?

A. In Davidson County and elsewhere within our trade area, which covers much more than Davidson County.

Q. And your trade area covers much more than Davidson County?

A. Yes, sir.

Q. You have branches located outside of the county?
A. Yes, sir.
Q. Would this trade area encompass those other areas where your branches are located?
A. And more, too, sir, yes, sir.
Q. Are you aware of the geographic area within which Nashville Bank and Trust Company conducted virtually all of its business?
A. Yes, sir, here within Nashville by and large.
Q. When you say Nashville——
A. Davidson County.
Q. Co-extensive with Davidson County?
A. Yes, sir.
Q. What, Mr. Earthman, is the only geographic area in which Commerce Union and Nashville Bank and Trust [fol. 586] Company both solicited these various services?
A. Davidson County.
Q. Would it be fair to say, Mr. Earthman, that Commerce Union encountered direct rivalry from Nashville Bank and Trust Company with respect to a good many of these services?
A. In certain areas we did meet direct competition from them.

Mr. Weinbaum: With the Court's permission, I would like to call the witness's attention to Government Exhibit 543 now in evidence, Your Honor, and hand the witness a copy to refer to.

The Court: All right.

Mr. Weinbaum: Your Honor, Government Exhibit 543 is an Interrogatory of the Plaintiff directed at the defendant banks requesting certain information with respect to demand deposits and time and savings deposits within the following ranges: $1 to $1000; $1001 to $10,000; $10,001 to $50,000; $50,001 and over.

In connection with this Interrogatory, we have asked the following question: State for Nashville Bank and Trust Company and Third National Bank, respectively, the extent of its interest in securing accounts in each size category. [fol. 587] I should like to read the answer to this question provided by the defendant banks: "With respect to demand deposits and time and savings deposits within the ranges stated, both the Nashville Bank and Trust Company

and the Third National Bank have a keen interest in acquiring accounts in all size categories."

By Mr. Weinbaum:

Q. Mr. Earthman, could you state what your bank's policy might be with respect to the solicitation of deposit accounts in each of these categories and whether this policy would be the same or different from the policy stated by the defendant banks?

A. We would concur with this policy.

Q. Turning your attention, Mr. Earthman, to the second page of that Government document, 543, we would like to ask in which size category of demand deposits did Third National Bank obtain most of its accounts according to number of accounts.

A. In the $1 to $1000.

Q. And in which category, according to number of accounts, did Nashville Bank and Trust Company obtain most of its accounts?

A. $1 to $1000.

Q. According to dollar amount, Mr. Earthman, what per- [fol. 588] centage of demand deposits of Third was derived from the smallest category?

A. Seven percent.

Q. And according to dollar amount, what percentage was derived by Nashville Bank and Trust Company in that same category?

A. Four percent.

Q. Would you agree, then, Mr. Earthman, that while in terms of number of accounts the small category provided the greatest source of demand deposit accounts, monetarily that for each institution this category was the source of the smallest percentage dollar-wise?

A. Yes, sir, according to this report.

Q. If you would, Mr. Earthman, direct your attention to the largest category of account size, $50,001 and over. I would ask you if in terms of percentage of accounts by number Nashville Bank and Trust Company and Third National Bank were comparable?

A. Yes, they were.

Q. What percentage by number?

A. One percent in both cases.

Q. That is, one percent of its total demand deposits by number derived from the largest category; is that correct?

A. Yes, sir.

[fol. 589] Q. According to dollar amount, could you indicate what percentage of accounts was derived by Third National Bank from the $50,001 and over category?

A. In dollar amount, 58 percent.

Q. And in dollar amount, what percentage in that category was derived by Nashville Bank and Trust Company?

A. 70 percent.

Q. Would it be correct, then, Mr. Earthman, to state that, although in terms of number of accounts the $50,001 and over category comprised a very small percentage of total demand deposit account business, that in terms of dollar amount it was the largest category percentage-wise for each of those banks?

A. Yes, sir.

Q. Looking at the percentage breakdown, Mr. Earthman, under demand deposits, could you state whether or not in your opinion the respective percentages for Third National Bank and for Nashville Bank and Trust Company are substantially similar?

A. In most respects it is similar. There are some variations, but I would say they are basically similar.

Q. Looking at the time and savings accounts percentages set out for each category, Mr. Earthman——.

Mr. Hooker: Excuse me, if your Honor please. I don't quite understand the materiality or the relevancy of this [fol. 590] line. He is now asking Mr. Earthman about similarity between statistics given in an answer to an Interrogatory by the Nashville Bank and Trust Company and the Third National Bank.

I don't see that he has laid any predicate to question Mr. Earthman as a statistician about the similarity of statistics.

Mr. Weinbaum: Your Honor, if I may suggest, you don't have to be a statistician to note similarities, general similarities, in statistics. I will very briefly relate all of this to Commerce Union Bank. We think it is relevant.

The Court: All right.

(Reporter read pending question.)

By Mr. Weinbaum:

Q. Could you please indicate whether or not in your opinion the array of percentages for Third and for Nashville Bank and Trust Company are substantially similar or not?

A. Basically the breakdown is similar. The figures are different, but in some respects it is similar.

Q. Are you familiar with the source of deposits in various size categories for Commerce Union Bank?

A. They are roughly in the line of the Third National Bank in both demand and savings and time.

[fol. 591] Q. And you have indicated that the breakdown for Nashville Bank and Trust Company and Commerce Union Bank are substantially similar?

A. Substantially, not equal but substantially similar.

Q. So that the array in demand for time and savings, time and deposit account for Nashville Bank and Trust and Commerce Union Bank would be substantially similar?

A. Yes, sir.

Q. Would you know of any reasons why Commerce Union's distribution would not be substantially comparable on demand and time and savings deposits

A. No, it is approximately the same.

Q. Would this be any indication, Mr. Earthman, in your judgment of a rivalry between Commerce Union and Nashville Bank and Trust Company for the same size of deposit business?

A. Well, I think that we were in rivalry with them in certain areas, but I don't know what conclusions to draw from these figures though, from that standpoint.

Q. Do you actively advertise and solicit deposit of accounts?

A. Yes, sir.

Q. Do you know whether or not Nashville Bank and Trust Company was actively soliciting any of the same type of deposit business which you were soliciting?

[fol. 592] A. Well, I can remember some advertising, but I don't know to the degree that they were penetrating the market with advertising.

Q. Are you aware of whether or not Nashville Bank and Trust Company solicited business accounts?

A. Yes.

Q. Or deposit accounts?

A. Yes, sir, they solicited deposit accounts.

Q. Are there certain types of deposit accounts in which you encountered Nashville Bank and Trust Company in your quest for business in this area?

A. In certain situations, yes.

Q. Will you tell us in what areas of your deposit account solicitation you encountered the presence of Nashville Bank and Trust Company?

A. I would say those locally-owned business establishments, small and medium size value of business, besides individual solicitation.

Q. And in this area of encounter with Nashville Bank and Trust Company for these deposit accounts, would you be able to characterize the extent of the rivalry for these accounts which existed between your bank and the Nashville Bank and Trust Company?

A. In these areas in which we—when we did meet them, we found that the competition was very aggressive, and [fol. 593] we knew that they were there.

Q. You state that when you did meet them, you knew that they were there. Were these isolated instances of encounter with Nashville Bank and Trust Company?

A. I wouldn't classify them as isolated. We certainly didn't meet them to the degree that we met our other two competitors.

Q. Mr. Earthman, what is meant by the retail bank market as you would define this term?

A. We classify the retail market as those individuals that we are soliciting and trying to encourage to do all of their banking business with us.

Q. Would your definition include any commercial business?

A. No, sir, we classify that as wholesale.

Q. And this classification as wholesale would include all sorts of commercial businesses, local or national companies?

A. Yes, sir.

Q. And would this wholesale classification include all sizes of accounts of these commercial enterprises?

A. Yes, sir.

Q. To what extent does Commerce Union place emphasis on what is called the retail bank market?

A. Well, we place a great deal of emphases on the retail

[fol. 594] market. We are extremely interested in the consumer loan field, and therefore, many of our assets are committed to this area.

Q. And do you know whether or not, based on your knowledge, Third National Bank and First American Bank may have emphasized the retail market to a greater or lesser extent than your bank?

A. Well, I think that the Third National has been involved in this consumer field over extended period of time, longer than the First American has, but all of the banks, all of the three of us have been quite extensive in this consumer field for sometime.

Q. But you indicate, do you not, that Third has paid particular attention to this field over a longer period of time?

A. They have been——

Mr. Hooker: I object to that as leading, if Your Honor please.

The Court: Sustained.

Mr. Weinbaum: Excuse me, Your Honor?

The Court: Sustained.

By Mr. Weinbaum:

Q. Mr. Earthman, would you restate, if you would, the degree of interest, if any, Third has shown in the retail banking market as opposed to the other banks in the com-[fol. 595] munity, in Davidson County.

A. Well, I would say that the Third and the American and the Commerce Union have paid a great deal of attention to the retail market.

Q. Have any of these banks been in the retail market for a longer length of time than the others?

A. Well, if you are classifying the overall retail market, no. I think we basically have all been in the retail market for the same period of time.

Q. In your judgment there would be no difference in emphasis on this market, that is given by your bank as opposed to given by Third?

A. No, I think we—at least I believe we give it the same emphasis.

Q. Mr. Earthman, in 1956, with regard to Nashville Bank and Trust Company, do you have any knowledge of whether

any change in emphasis occurred at that institution to the nature and type of business that it was seeking in the community?

A. Is this the time in which Mr. Hackworth joined the bank? Is this approximately the time?

Q. I would——

A. I just don't know, 1956 doesn't——

Q. 1956 was the approximate time that Mr. Hackworth joined the bank, that is right.

[fol. 596] A. I would say that there was a great deal of change in the policies of the bank; at least it appeared so.

Q. Can you state some of these changes, what they were, as you observed them or know them?

A. Well, they emphasized quite a bit more in their commercial banking field, and their retail banking field as opposed to their long outstanding position in the trust field. At some period of time after Mr. Hackworth joined the bank, they became quite aggressive in what we classify as the direct consumer loan business.

Q. What does the direct consumer loan businss encompass?

A. This is where the individual goes to the bank and makes an installment loan to buy an automobile as opposed to the individual who goes to the automobile dealer and the automobile dealer takes care of making the loan.

Q. Did you encounter any sort of rivalry from Nashville Bank and Trust Company in the consumer loan?

A. In the small direct business, yes.

Q. You speak of the small direct business, you are speaking of automobile loans?

A. Yes, in the area of $2,500 to $3,000 and below.

Q. Would these also include loans for items other than automobiles?

[fol. 597] A. Oh, I'm sure so, yes.

Q. And would you characterize once against the type of competition you encountered from Nashville Bank and Trust Company in the consumer loan field?

A. In the direct consumer loan field with particular emphasis on automobile financing, we had very fine competition from the Trust Company.

Q. Mr. Earthman, can you distinguish again what you mean by direct consumer loan?

A. This is where the individual customer goes directly to the bank to make his financing plans as opposed to the individual who goes to the automobile dealer and the automobile dealer makes the arrangements and the automobile dealer in turn sells the loan to the bank, and that is what we call indirect lending.

Q. And in what manner did Commerce Union handle its automobile loan?

A. Well, we were in both fields, but I would say basically we were in the indirect field rather than in the direct field.

Q. Working through the dealer?

A. Yes.

Q. And not directly with the customer?

A. Insofar as dollar volume is concerned, it was more indirect than it was direct.

[fol. 598] Q. You did do some direct though?

A. Yes.

Q. In connection with your automobile advertising, Mr. Earthman, did you advertise one or the other method of financing?

A. Yes, we did, and it all depends on the area in which we were operating. If we were in an area where we had a larger dealer situation going, then it was not to our benefit to advertise for direct loans. In other areas, where we did not have close dealer relationships, then we would advertise for direct loans.

Q. Are you aware of whether or not the Nashville Bank and Trust Company advertised its automobile financing?

A. Yes, they did.

Q. And do you know what type of automobile financing the Nashville Bank and Trust Company advertised?

A. You mean what was the type of advertising?

Q. What was the type of financing that they advertised, the type of automobile financing that they advertised? Would it have been direct?

A. To my knowledge, it was all direct.

Q. Thank you. In connection with this change in emphasis which occurred at Nashville Bank and Trust Company, approximately in 1956, Mr. Earthman, would you please tell us in what other manner the activities of the Trust [fol. 599] Company manifested themselves in the community?

A. Well, Mr. Hackworth, under his leadership and Mr. Hill's leadership, I think, made the Trust Company much better known in the community. I think their officers and particularly some of them, were most aggressive.

Q. I would like to call your attention, Mr. Earthman, once again, to Government Exhibit 543, and with the Court's permission, refer to this document.

In portion B of the interrogatory, we asked the defendant banks to supply information with respect to loans in the following size categories: $1.00 to $2,500; $2,501 to $10,000; $10,001 to $50,000; $50,001 and over.

And in that interrogatory, the question was asked to state the extent of Nashville Bank and Trust Company's and Third National's interest in securing accounts in each such size category.

The answer that the banks provided was as follows:

> "The extent of interest in securing of all sizes is just as keen on the part of both banks as their interest in securing all sizes of deposit accounts. This is particularly true since the consumer loans handled on a monthly repayment basis generally bear a greater yield than do loans handled on a fixed maturity basis. Every effort is exerted to obtain sound loans of all [fol. 600] categories, however."

We would like to ask you, Mr. Earthman, whether the policy, the loan policies at Commerce Union Bank would be the same or different from the expressed interest stated by Third National and Nashville Bank and Trust Company for securing loans of all sizes?

A. It would be the same, sir.

Q. Thank you. Mr. Earthman, did you find the Nashville Bank and Trust Company to be a competitor in the trust field?

A. Yes, sir.

Q. And how would you characterize the extent of the competition you observed and were aware of in the trust field?

A. Well, the trust company had been in existence for many, many years, and had made their name actually in the trust field. As a result, many old and very outstanding estates were in the trust company, which in itself attracted

other estates, and we felt that the trust officers at the Trust Company were not only highly talented trust officers, but extremely good competition to us.

Q. Mr. Earthman, is there any particular characteristic of the trust business which would distinguish it from other aspects of the banking business in terms of the seeking and obtaining of trust accounts?

[fol. 601] A. I don't really quite—go over that again, and maybe I can——

Mr. Weinbaum: Could you read the question, please?

(The last question as recorded was read by the reporter.)

[fol. 602] The Witness: Basically it is the same game of trying to sell a customer, a prospect, on doing business with you. Of course it is a different service than just ordinary commercial banking services. It takes people of different training and more technical knowledge possibly in some areas.

But I think by and large it is just the same old thing—hard and intelligent work.

By Mr. Weinbaum:

Q. Does Commerce Union go out and compete for this type of business?

A. Yes, we do, sir.

Q. Does Nashville Bank and Trust Company go out and compete for this kind of business?

A. Yes, sir.

Q. How would you characterize the competition that you meet from Nashville Bank and Trust Company in the trust field?

A. When we would meet them, they were very effective competitors.

Q. Were the occasions that you met Nashville Bank and Trust Company in the trust field infrequent?

A. I won't say they were infrequent, no.

Q. Where do you conduct most of your trust business?

[fol. 603] A. At our home office.

Q. And are you aware of where Nashville Bank and Trust Company conducts its trust business?

A. Yes, sir.

Q. Where do they conduct their trust business?

A. At their head office on Union Street.

Q. Mr. Earthman, were you familiar with Nashville Bank and Trust Company's efforts to go out and solicit new business accounts?

A. Yes, sir.

Q. Were you familiar with Mr. Kirby Primm, in charge of Nashville Bank and Trust Company's New Business Department?

A. Yes, sir.

Q. Could you characterize for the Court the manner in which Nashville Bank and Trust Company went out and endeavored to obtain new business?

A. The trust company was aggressive in the areas of Mr. Primm and Mr. Hackworth and Mr. Hill, Mr. Parker and Mr. Thompson, to mention the main ones. These gentlemen were extremely aggressive in soliciting business.

Q. How about Mr. Buquo in the New Business Department?

A. He was, too.

Q. In the areas, Mr. Earthman, in which, as I believe you stated, you were aware that Nashville Bank and Trust Com- [fol. 604] pany was there, in those areas of confrontation with Nashville Bank and Trust Company how would you characterize the degree of rivalry between your institution and Nashville Bank and Trust Company?

A. Well, they were most effective. Possibly they were not as effective as our two other competitors, but in so many cases when we did run into them, they were highly effective people.

Q. Aggressive?

A. Yes, sir.

Q. Keen competition?

A. Very much so.

Q. And when you were aware of this keen competition, aggressive competition, from Nashville Bank and Trust Company, you were aware also that First American was usually there?

Mr. Hooker: Objection, Your Honor, to the form of this question.

The Court: That is leading.

By Mr. Weinstein:

Q. In those areas where you encountered this keen aggressive rivalry, Mr. Earthman, were you aware of the presence of other banks as well?

A. Yes.

Q. Were you aware of the presence of First American?
[fol. 605] A. Yes.

Q. Were you aware of the presence of Third?

A. Yes.

Q. Would the same be applicable with regard to a bank like Capital City?

A. No, sir.

Q. Or the Bank of Goodlettsville?

A. No, sir.

Q. You have already testified, Mr. Earthman, with regard to the capabilities of certain of the officers employed by Nashville Bank and Trust Company. We would like to go into this a little more fully with you. As of the beginning of the year 1964, could you describe in your opinion the professional banking competence of Mr. Overton Thompson?

A. Mr. Thompson was a fine lawyer, was exceptionally good in the trust field, and I believe had moved at that time into the commercial banking field. We all had a very high regard for Mr. Thompson.

Q. Could you comment, if you would, on the professonal competence of Mr. Fitzgerald Parker in the trust department?

A. Mr. Parker had been active in the trust business for some time, and we considered him one of the top trust officers anywhere in the entire Southeast.

[fol. 606] Q. Were you familiar with the work of Mr. John Hardcastle?

A. Mr. Hardcastle was a young man who was, I believe, a trainee, and we felt very highly of the prospects of Mr. Hardcastle.

Q. There was some reference to Mr. Hubert Buquo just a little earlier. Could you please state what in your opinion his competence was as a banker?

A. Mr. Buquo was a fine gentleman and a very good banker.

Q. And his field of specialization? Were you aware of that, what area he worked in at the Trust Company?

A. I felt more in the loan business and development field.

Q. Could you comment, Mr. Earthman, on the professional competence of Herbert Aldrich, please?

A. He was in the consumer loan and installment loan area and he was, I think, the man generally responsible for carrying out the policies of Mr. Hill and Mr. Hackworth and going into the direct consumer loan business.

Q. I would like to ask you, Mr. Earthman, if you have an opinion as to the professional banking abilities of the collection of officers that was running Nashville Bank and Trust Company as of January 1, 1964.

A. The top people in the bank, we felt very highly of.

[fol. 607] Q. Mr. Earthman, are you generally familiar with Nashville Bank and Trust Company's growth in deposits and net income from 1955 up through 1963?

A. Generally I am in regard to the deposits.

Mr. Weinbaum: With the Court's permission, I would like to hand Mr. Earthman Government Exhibits 1008 and 1010.

Mr. Minicus: May I confer with my associate, please, Your Honor?

By Mr. Weinbaum:

Q. First, Mr. Earthman, if you would please turn to Government Exhibit 1008. What percentage figures is indicated for increase in deposits for Nashville Bank and Trust Company?

A. From June 1955 to June 1964?

Q. That's correct.

A. Percent increase is 118.7.

Q. Turning to Government Exhibit 1010, if you would, what percentage figure is indicated for the increase in net income for the period 1955 through 1963?

A. It indicates net income after taxes, percent of increase of 271.7 percent.

Mr. Hooker: If your Honor please, Mr. Earthman didn't compile these statistics. I don't see the purpose of——

[fol. 608] The Court: I suppose he is just laying the groundwork for another question.

Mr. Weinbaum: That is correct, Your Honor.

By Mr. Weinbaum:

Q. Mr. Earthman, looking at this growth record in deposits for Nashville Bank and Trust Company over the period indicated, coupled with your bank's experience in the market place with Nashville Bank and Trust Company in the areas of competition that you have stated, would it in your opinion be fair to state that the Nashville Bank and Trust Company was an active competitor in the Davidson County geographic market?

Mr. Hooker: Objection to the form of that question, Your Honor.

The Court: Because it is leading?

Mr. Hooker: Yes, sir.

The Court: "Would it or not be fair to state"—put the "not" in there and it will be all right. Do you want to rephrase it?

Mr. Weinbaum: Yes, sir.

By Mr. Weinbaum:

Q. Mr. Earthman, looking at your experience with Nashville Bank and Trust Company in competition with it: In those areas wherein you encountered competition from [fol. 609] Nashville Bank and Trust Company, coupled with the indicated rate of growth, confining it to deposits, would you have any opinion as to the extent or the effectiveness of its competition in the Davidson County geographic market?

A. Well, in the areas in which we met them, I think the figures and the history that we all had, they were very effective.

Q. Mr. Earthman, was Commerce Union Bank ever interested in purchasing or merging with Nashville Bank and Trust Company?

A. Yes, sir.

Q. Did representatives of Commerce Union ever have discussions on the subject with Mr. Horace Hill, Jr.?

A. Yes, sir.

Q. Could you please state the nature of these conversations, including the approximate dates that such conversations might have occurred?

A. Well, insofar as my other conversations with Mr. Hill, I would imagine that they would go back possibly to 1962, 1961 maybe, on an informal basis on several occasions.

Other discussions were with Mr. Hackworth; but all of them informal. Nothing of a formal nature. No exchange of basic information in order to sit down and negotiate.

Q. Why was Commerce Union interested in buying or [fol. 610] merging with Nashville Bank and Trust Company?

A. Basically the trust assets.

Q. Did representatives of Commerce Union Bank ever have discussions on the subject of buying or merging with Nashville Bank and Trust Company subsequent to the time that Mr. William Weaver acquired control of the Trust Company in mid-January 1964?

A. Yes, sir. I went to Mr. Weaver's office shortly after he purchased control of the Trust Company and suggested that we possibly could work out a merger of the Trust Company with the Commerce Union.

Q. Can you pinpoint at all the date and approximate time at which you went and spoke with Mr. Weaver initially?

A. I would say it was within the week after it was announced that he bought control.

Q. Were you interested in the Trust Company at this time for the same reason you were interested when you entered into those informal discussions with Mr. Hill?

A. For that reason and some other reasons.

Mr. Weinbaum: Could you please read the last answer to me?

(Reporter read the last answer.)

By Mr. Weinbaum:

Q. Mr. Earthman, could you state what other reasons you [fol. 611] had for your interest in purchasing Nashville Bank and Trust Company at that time—that is, at the time you spoke with Mr. Weaver?

A. I don't think, if I don't have to answer that—I think this is something I don't think has much to do with the trial.

Q. You were primarily interested in purchasing the Nashville Bank and Trust Company for its trust assets?

A. Yes, sir.

Q. You indicated, Mr. Earthman, that it was about a week after it was announced that Mr. Weaver had purchased control that you went and spoke with him. Is that correct?

A. That's correct.

Q. The date of the contract between Mr. Weaver and Mr. Hill and Mr. Hackworth for the sale of stock to Mr. Weaver is dated January 14, 1964, Mr. Earthman. Would it have been approximately a week from that date that you would have spoken with Mr. Weaver for the first time?

A. To my knowledge the first time was shortly after, and I would estimate a week that I went up to Mr. Weaver's office and spoke to him about this.

Q. Do you recall approximately when the disclosure of Mr. Weaver's purchase was announced in the newspapers?

A. No, I don't remember the date. I know that Mr. Weaver and Mr. Craig came down to our bank prior to the [fol. 612] public announcement and told us that Mr. Weaver had purchased control of the Trust Company.

Q. Can you say, Mr. Earthman, with any degree of certainty that the time at which you first discussed the matter with Mr. Weaver was before the end of January?

A. Oh, yes, sir.

Q. In your discussion with Mr. Weaver did you exchange any sort of preliminary financial information on your bank and Nashville Bank and Trust Company?

A. Only the information I think that was of public knowledge.

Q. Did you meet with Mr. Weaver on more than one occasion?

A. Yes, sir.

Q. Can you approximate for us how many occasions you did see Mr. Weaver on this subject?

A. Or on the telephone?

Q. Both, yes.

A. I would say ten or fifteen times.

Q. How many personal or face-to-face meetings did you have with Mr. Weaver?

A. Possibly three or four.

Q. Was any mention of price or the exchange rate of stock brought up in any of these conversations?

A. Yes, sir.

[fol. 613] Q. Can you explain for us, Mr. Earthman, what

kind of an exchange rate for the stock of the two banks was discussed by you and Mr. Weaver?

A. Mr. Weaver was discussing in the neighborhood of thirteen to one, and I was discussing ten to one.

Q. When you say thirteen to one and ten to one, would you explain what is meant by that?

A. Well, thirteen shares of Commerce Union stock for one share of the Trust Company's stock.

Q. What was the approximate market value of Commerce Union stock at the time of these discussions?

A. As I recall, roughly $36; $35 to $36.

Q. Would it be fair to say, Mr. Earthman, that Mr. Weaver—on the basis of thirteen shares for one—was asking roughly $468 per share for his newly purchased stock based on the prevailing market of Commerce Union stock?

A. I am not that fasta multiplier, if that's what it works out to be.

Q. Would you accept this figure, subject to correction?

A. Yes.

Q. Did negotiations with Mr. Weaver finally terminate?

A. Yes, sir.

Q. Can you indicate approximately at what point in time?

[fol. 614] A. The last time that I recall talking to Mr. Weaver, I was in New York and he was there, and this was in possibly the second week of February or the first week of February of that year.

Q. Can you indicate for what reason negotiations did terminate?

A. We couldn't get together on a price.

Q. What benefits in your opinion, Mr. Earthman, accrued to the Third National Bank by virtue of this merger which they could not have gained through ordinary growth and competition?

A. Well, I think that the Third or us or anyone would hope that we would eventually get there; but this speeds up the process.

Q. You testified earlier that the trust department, you believe, was the most valuable asset of Nashville Bank and Trust Company.

A. Yes, sir, we thought it was highly desirous.

Q. Mr. Earthman, can you state whether or not the trust department business of a bank is ordinarily considered to

be a more stable, less movable, type of a bank's business?

A. Well, I think it is a lot more difficult to move an estate due to all the legal ramifications from one institution to another. Of course it can be done. But I would say gen- [fol. 615] erally you have fewer movements of estates from one bank to another bank than you do other business.

Q. Would this factor have anything to do with the high value that a bank might place on another bank's trust assets?

A. Well, historically I think particularly in this area of trust business it has not been extremely profitable. I think possibly that the institutions have relegated it to somewhat of a secondary place in the overall philosophy of banking.

Our opinion has been that this can be turned around into a very profitable phase of overall banking.

[fol. 616] Q. And this was why Commerce Union was interested.

A. Yes, sir.

Q. Could you venture an opinion as to whether or not the Nashville Bank and Trust Company might have had trust assets which were in fact immovable to another institution?

A. Oh, I'm sure there possibly were. I don't know of any specifics, but every institution has some of that category. They are so difficult to go through the legal procedures, that it's not worthwhile to fool with it.

Q. Would you say, Mr. Earthman, that Nashville Bank and Trust Company's goodwill or reputation or standing in the community was any sort of a genuine asset?

A. Yes, sir, it was.

Q. This certainly could not have been acquired through a bank's ordinary competition and growth—

Mr. Hooker: Object to the form of that question, if Your Honor please.

The Court: Sustained.

By Mr. Weinbaum:

Q. Do you know of any other way that Third National Bank, or any bank for that matter, could have taken on and acquired the Trust Company's good will or reputation but for a merger?

A. Well, Mr. Weinbaum, I think that all of the banks in Nashville have a very fine reputation.

[fol. 617] Q. Could you restate for us, Mr. Earthman—

can you state for us, Mr. Earthman what kind of a reputation Nashville Bank and Trust Company had in the community?

A. It had a very fine reputation, extending over a long period of time.

Q. Did it have a particular reputation for one aspect of its business or any aspects of its business more than for other aspects of its business?

A. I would say through most of its history, up to the last ten years or so, it was mainly in the trust business, and some commercial business.

Q. And can you state whether or not these aspects of the business were the ones to which was attached a particularly high reputation in the community?

A. I think their trust operation was a very high quality and was so recognized in the community.

Q. Were any of the physical assets of Nashville Bank and Trust Company considered to be particularly desirable by Commerce Union?

A. Well, we felt that the—that their garage adjacent to their head office was a most desirable aspect for them and for a very good competitve feature.

Q. And can you explain the manner in which the attached parking garage was a very good competitive feature?

A. Well, I think at that time, the—we didn't have one, [fol. 618] the American didn't have one, and the Third had one in their lower level, but it was—I don't know, they have very few parking spaces, so this was the only one that was covered and directly adjacent to the banking office.

Q. Mr. Earthman, after the interest of the H. G. Hill Company was sold by Mr. Hill to Mr. Weaver, did Commerce Union go out and solicit any of the customers of Nashville Bank and Trust Company?

A. Yes, sir.

Q. How would you characterize this solicitation?

A. Well, we told everyone that we wanted them to put their best foot forward and give it everything we had.

Q. Did you solicit all sorts of—all types of business that had theretofore been known to be customers of Nashville Bank and Trust Company?

A. Well, after our negotiations with Mr. Weaver broke down, we knew the areas in which they were—had their

strength, where their customers were, and who they were, and we—after our negotiations stopped, we actively pursued the matter of soliciting the major accounts of the Trust Company.

Q. Turning for a moment, Mr. Earthman, to a consideration of the lending limit of Commerce Union Bank, could you state what the approximate lending limit of your bank was on January 1, 1964?

[fol. 619] A. January 1, 1964, at that time I think we had five million in capital and six million in surplus which is eleven million; following the ten per cent rule we had a lending limit of a million one.

Q. You are a state bank?

A. Yes, sir.

Q. And under state law to what percentage of capital surplus and undivided profits are you permitted to loan on a single loan?

A. Under state law we can lend up to twenty-five per cent of capital and surplus.

Q. Are there circumstances precedent to your lending up to the twenty-five per cent rule which are set out in the law?

A. Yes, basically we have to—any loan that exceeds—that goes up to the twenty-five per cent has to be approved by the Board of Directors, and in our case, the board has delegated that responsibility to the Executive Committee.

Q. Are you aware of the fact, Mr. Earthman, that state law provides that a state bank can lend up to fifteen percent of its capital surplus and undivided profits except under these circumstances when it can go up to twenty-five per cent?

Mr. Hooker: If Your Honor please, he stated that follow-[fol. 620] ing the ten per cent rule, his lending limit was a certain amount.

Now as I conceive it, Mr. Weinbaum is now cross examining him about that for the purpose of getting him to say it's some higher amount.

Mr. Weinbaum: We will strike that question, Your Honor.

The Court: All right.

By Mr. Weinbaum:

Q. As a practical matter, Mr. Earthman, what is the lending limit at your bank?

A. Well, we follow the ten per cent rule that is laid down by the Federal Reserve System in practically all cases, which is ten per cent of our capital and surplus.

Q. Does the Fed require you to maintain a ten percent rule?

A. No, as a state bank, a member of the Fed, we can follow whatever the state law says. In some cases we do go above this ten per cent limit.

Q. How often do you go up to your twenty-five per cent limit, Mr. Earthman?

A. Very seldom.

Q. How often do you go up to your self-imposed ten per cent limitation?

A. Well, this is very frequently.

[fol. 621] Q. Is it equally as frequent with National accounts as it is with locally-owned business?

A. No, sir. In the case of national—in the case of locally-owned businesses, usually the demand for that kind of money is not necessary. These lines with a number of exceptions locally and within our trade area are usually given to national concern that are doing business within our area.

Q. Mr. Earthman, in your opinion, his Commerce Union Bank ever been hampered by the fact that its loan limit is not as high as the largest banks in town?

A. No, sir,

Q. In your judgment, has your loan limit been adequate to take care of the loan demands in the Nashville area?

A. Yes, sir.

Q. In your judgment, has the Nashville-Davidson County area been hampered by the fact that your loan limit is what it is?

A. No, I've heard no complaint to that.

Q. Mr. Earthman, do you have many requests for loans in excess of your ten per cent limit, your ten per cent, self-imposed limit, which for all purposes is apparently your lending limit?

A. Well, in the construction field and large construction [fol. 622] projects, we have requests to go higher than our

ten per cent, but insofar as—as far as—I might explain that on the issuance of a line of credit for working capital to a national concern, we are trying to get them to borrow from us. They are not coming to us saying will you lend us some money. I mean this is a highly competitive field, and if we can get on their books and become one of their line banks, then this is what we are all trying to do, so it is—we are the aggressor in trying to get the national concerns to accept a line of credit and then after they accept it to actually use it.

Does this explain it a little better?

Q. Yes, sir, and in connection with your going out and soliciting national accounts, do you ordinarily go beyond your ten per cent with a national account?

A. No, sir.

Q. You limit it to your per cent?

A. We are on our own, because we could get an awful lot of lines out dollar-wise.

Q. So that when you go beyond your ten per cent, Mr. Earthman, would—can you state whether or not these situations would involve locally oriented businesses as a general proposition?

A. Normally the principals in the business would be local. Now where their projects might be wouldn't necessarily [fol. 623) be in this area.

Q. Do you very often participate in loans?

A. We have some participations. Very seldom do we—unless it's a requirement of the client—sell a participation to a city bank. We usually try to take care of all of it ourselves.

We do participate from excess lines that the small country banks might have.

Q. Are these usually your correspondents?

A. Yes, sir.

Q. In connection with your correspondents, Mr. Earthman, how frequently does a correspondent or country bank call on you for a line of credit in excess of your lending limit, your ten per cent limit?

A. Well, in the case of our ten per cent limit, which is a million three right now, it's very seldom that we have requests from any one customer, from these country banks that would be more than that.

Q. Mr. Earthman, with regard to the country banks, for whom you are correspondent, do you compete for business with your correspondent banks in those areas where your correspondents are located? That is do you compete for business from the retail customers of your correspondent banks?

A. From the retail customers?

[fol. 624-629] Q. Yes.

A. No.

Q. Do you ordinarily compete with your country or correspondent banks for the smaller or medium-size commercial business in those areas of your correspondents?

A. We only try to help them get the business, if he doesn't have it; and if he can't take care of it, we will assist him in that way, but we don't make it a policy of going out and competing with one of our country banks in commercial or retail business within their particular trade area, unless it would be of benefit for them that we assist them.

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[fol. 630] C. D. Rippy, a witness called to testify by and in behalf of the Plaintiff, after having first been duly sworn, was examined, and testified as follows:

Direct examination.

By Mr. Hunter:

* * * * * * *

Q. And what is your present position?

A. I am Senior Vice-president and Trust Officer of Commerce Union Bank.

Q. Would you briefly describe your duties in your present position?

A. Well, I'm head of the Trust Division; I supervise [fols. 631-636] the operation of the department; coordinate the various sections; determine investment and administrative policies; do a certain amount of the new business work.

Q. Are you a member of the Board of Directors of the bank?

A. Yes.

* * * * * * *

[fol. 637] Q. Is this competition more or less intense than the competition for commercial banking business?

A. I think the competition for trust business is much less intense. Generally we seek trust business primarily from our own customers, our own commercial customers, people with whom we already have a relationship.

In some instances there will be people with split accounts —that is, people who do business with both banks; and in some of these situations there would be competition between the banks.

* * * * * * *

[fol. 638] Q. Calling your attention to the year 1963, Mr. Rippy, would you identify the banks which you consider to be your principal competitors for trust business at that time?

A. It would be the other larger local banks—First American, Third, Nashville Trust.

Q. Nashville Bank and Trust?

A. Yes.

Q. How would you rate those banks as competitors, Mr. Rippy?

A. This would be difficult to say one, two, three. I feel [fol. 639] that they were approximately equal competitors as far as we could observe for trust business.

Q. Approximately equal?

A. Yes.

Q. In your opinion, was Nashville Bank and Trust Company a significant factor in the trust business in Nashville?

A. Yes.

Q. Did you meet any competition for trust business from the Bank of Goodlettsville?

A. No.

Q. Capital City Bank?

A. No.

Q. Citizens Savings Bank and Trust Company?

A. No.

Q. From any other corporation in Davidson County, to your knowledge?

A. Not to my knowledge.

Q. What are the most important factors in drawing trust business to a particular bank, Mr. Rippy?

A. Well, I think the standing and reputation of the bank in the community, and this involves its reputation as to integrity, ability, and perhaps investment management.

Q. On the basis of those specific ingredients of reputation, how would you rate the Nashville Bank and Trust [fol. 640] Company over the years?

A. The Nashville Bank and Trust Company had a good reputation in the trust business.

Q. Have you had occasion to observe the professional competence of the trust officers of the Nashville Bank and Trust Company?

A. In a general sort of way.

Q. Were you familiar with the work of the head of the trust department—Mr. Fitzgerald Parker?

A. When you say work, I am not sure what you mean. We obviously don't go into each other's departments and observe their specific performance. I have known Mr. Parker for many years and I regard him as an extremely well-qualified trust man with a fine reputation in the business.

Q. Are you familiar with Mr. Overton Thompson, generally?

A. Yes, I have known Mr. Thompson for many years. I think he was and is an extremely capable trust man.

Q. Were you generally familiar with the professional competence of Mr. Marvin Sory?

A. Yes, and I think Mr. Sory is a very able trust man.

Q. Mr. Rippy, is trust business a source of new customers for general banking business?

[fols. 641-650] A. Yes, we always seek to get commercial business from our trust customers. Many of them are already our commercial customers, but we try to get trust business from all the people who are involved with these trusts in any way.

Q. Would this include beneficiaries under a will?

A. Yes, it would include beneficiaries, advisors, co-trustees, or anybody with whom we establish a good relationship in connection with the administration of these trusts.

Q. And would the same be true for the administration of estates and executorships?

A. Yes.

Q. How does a pension fund trust help in obtaining new general banking business, if you know?

A. Well, through the administration of a pension trust, this tends to provide an opportunity to secure trust business from officers of the corporation with whom you may not have had previous contact or relationships.

* * * * * * *

[fols. 651-653] WILLIAM L. MIDGETT, a witness called for and on behalf of the Plaintiff, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hunter:

* * * * * * *

Q. And your present position?

A. Trust officer, First American National Bank.

Q. Would you briefly describe your duties in that position?

A. Primarily the administration of trusts and estates.

* * * * * * *

[fol. 654] Q. Mr. Midgett, I would like to show you Government Exhibit 550 in evidence, which is a list of fees charged by Third National Bank and Nashville Bank and Trust Company as of December 1963, and ask you whether [fol. 655] you had an opportunity to review that document?

A. Yes.

Q. Are the fees as set forth in Government Exhibit 550 substantially similar to the fees charged by First American for trust services?

A. The basis of the computation would be a little different in each case. I think the net result in dollar amount of commissions in each instance would be roughly comparable. Probably our schedule would come closer to that

of Nashville Bank and Trust Company than that of Third National Bank in method of computation.

Q. Have you had occasion to observe whether there is rivalry among banks for trust business?

A. Yes.

Q. Is there, in fact, rivalry among the banks in Nashville for trust business?

A. Yes.

Q. In 1963, which banks did you regard as your principal competitors for trust business?

A. All of them were. Third National Bank, Nashville Bank and Trust Company, Commerce Union Bank.

Q. How would you describe the competition you received from Nashville Bank and Trust Company for trust business?

A. In our case I would say probably second to Third [fol. 656] National Bank, and on the same level with that of Commerce Union Bank.

Q. How did this competition manifest itself?

A. In soliciting trust business, to be told by the prospect or prospective client that he already had a will naming another bank, or he already had a trust agreement naming another bank.

Trust departments depend upon their own commercial departments for prospects. They also depend upon life insurance underwriters, attorneys, accounts, for that business.

To the extent that a client was referred by one of these other professional people to another bank, I think it would be an important manifestation of competition.

Q. Would you say it happened frequently or infrequently, that you observed that Nashville Bank and Trust Company had already acquired a will or an estate which you were soliciting?

A. I would say frequently.

Q. Is the reputation of a trust department important in securing new business in your opinion, Mr. Midgett?

A. It certainly is.

Q. Would you comment on the reputation of the trust department of Nashville Bank and Trust Company?

A. I think they had a very fine reputation, very complete trust administration.

[fol. 657] A. Were there particular trust administrators

whom you were familiar with at Nashville Bank and Trust Company?

A. Yes, Mr. Parker, Mr. Thompson, Mr. Haston, in my opinion were capable, competent trust administrators.

Q. Mr. Midgett, would you actively solicit new general banking business from people you come in contact with through trust services?

A. Yes, certainly. Any time you come into contact with an individual, either as beneficiary of an estate or trust or profit-sharing or pension plan, and that individual did not presently bank with us, with a checking or savings account or any bank service, we solicit that account as part of our duties.

Q. This would be generally true for most personal and corporate trust services?

A. Yes, as far as our bank is concerned.

Q. Do you consider this a significant source of new business?

A. Yes, I think so.

Q. In your opinion, Mr. Midgett, what benefits did Third National Bank gain by acquiring the trust assets of the Nashville Bank and Trust Company?

A. Pertaining to important income-producing operations in the trust department.

[fol. 658] Q. Might it also lead to new commercial business?

Mr. Knight: Objection, if Your Honor please, as leading.

The Court: That was somewhat leading, yes.

By Mr. Hunter:

Q. Are there any other benefits you may have received?

A. Yes, I think we would obtain additional commercial business through trust relationships.

*   *   *   *   *   *   *

[fol. 659] Cross-examination

By Mr. Farris:

* * * * * * *

Q. Your trust department, then, is generally, I would assume from that, doing more business now than it did three years ago, is it?
[fol. 660] A. Yes.
Q. Have you found that your trust department has been under any competitive handicap in the last three years?
A. We have felt competition, I would say, but we have still grown, nonetheless.
Q. You felt competition?
A. Yes, sir.
Q. Have you felt more competition than before?
A. Did I understand the question—felt more competition within the last three years than previous to the last three years?
Q. Yes, sir.
A. No, sir, I would say not.
Q. Is the competition any less than before?
A. Yes, I would say so.
Q. In what respect?
A. In respect that when a prospective client or customer was approached, it was more often the case that he had been previously contacted by some other bank and had named that bank in his will or in his trust.
Q. Do you know of any incidents that you can name where anyone has told you that he has received less contact or less solicitation?
A. No. sir.
[fols. 661-662] Q. In any event, your bank is bigger than it was, and has grown?
A. Yes, sir.

* * * * * * *

[fol. 663] Q. Do you find Third National has been an aggressive competitor here locally in Davidson County as well?
A. Yes, sir.
Q. Has their competition let up any in the last year or so?

A. No, sir, not to my knowledge.
Q. Is it just as vigorous as ever before?
A. Yes, sir.
Q. Now, Mr. Midgett, with respect to your own trust department, do you have an idea of about what percentage of that business comes from the commercial side of First American Bank?
A. No, sir, I would say a big percentage.
Q. A big percentage?
A. Yes, sir.
Q. Would you say it is a very rare thing for a First American commercial customer to take his trust business elsewhere?
A. Yes.
Q. Wouldn't that be a fair statement with respect to most banks and their commercial customers?
A. Yes.

* * * * * * *

[fol. 664] Q. Do you know of any appreciable amount of trust business in this area that is leaving Nashville and going to other cities to be served?
A. No, sir.
[fols. 665-666] Q. Do you know of some?
A. Yes, I could think, perhaps, of some.
Q. Do you happen to know whether any Nashville Bank at all has the pension trust of Tennessee Valley Authority employees?
A. Not to my knowledge.
Q. Now, Mr. Midgett, if First American happened to be a billion dollar bank, and we would assume from that a larger trust department to go along with it, do you believe that a situation like that would be of benefit to the city of Nashville and the state of Tennessee?
A. Yes.

* * * * * * *

[fol. 667] Redirect examination.

By Mr. Hunter:

Q. Mr. Midgett, I believe you stated on your direct examination, that you regarded Nashville Bank and Trust Company as about equal in trust competition, is that correct?

A. Yes, on competition basis.

Q. Do you know approximately how many branches Commerce Union Bank has, rough estimate?

Would it be more than five?

A. Yes, it would be more than five, sir.

Q. And how many branches does Nashville Bank and [fols. 668-669] Trust Company have?

A. Two, I think.

Q. Two offices?

A. Yes.

Q. In your opinion, Mr. Midgett, has a significant trust department been eliminated from competition since 1963?

A. Yes.

Q. And what was that trust department?

A. Nashville Bank and Trust Company.

* * * * * * *

Recross-examination.

By Mr. Farris:

Q. Mr. Midgett, when you say eliminated, you don't mean it's no longer there; that office is still right down the street, is it not?

A. Yes, sir.

Q. It's still doing business, is it not?

A. Yes, sir.

Q. Still has Mr. Parker down there that you said was a very good competitor?

A. Yes, sir.

Q. You think Mr. Parker is as competitive today as he was two years ago?

A. Yes, sir.

[fol. 670] KIRBY O. PRIMM, a witness called to testify by and in behalf of the Plaintiff, after having first been duly sworn, was examined, and testified as follows:

Direct examination.

By Mr. Minicus:

* * * * * * *

Q. By whom are you employed, and what is your title of your place of employment?

A. First American National Bank, one of the fifty-two vice-presidents.

Q. Since what date have you been with your present employer?

A. Monday, February the 3rd, 1964.

Q. By what bank were you employed prior to February 3rd, 1964?

A. Nashville Bank and Trust Company.

Q. When did you join the Nashville Bank and Trust Company?

A. Saturday March the 25th, 1939.

Q. Will you please describe the earlier positions held by you at the old Trust Company, and your progress through that institution down to January 31, 1964?

A. Well, I started as a runner in March, 1939, and [fol. 671] moved up to the bookkeeping department, February, 1940; moved downstairs as a teller, as a savings teller, in November, 1940; moved up to pay and receivings teller in June, 1941; left the bank in December 8, 1941, volunteered for the United States Navy.

I came back from the Navy on March 1, 1946, I started as a pay and receiving teller; moved up to collection teller in August, 1946; went to the trust department, November 1946; remained in the trust department until June, 1956.

In 1956, I started soliciting business along with Mr. H. C. Buquo for the bank. Mr. Buquo was in charge of the business and development department and I assisted Mr. Buquo.

Q. So that during the course of the many years that you were with the Nashville Bank and Trust Company,

you were in a great many of the departments of that bank?

A. Yes, sir.

Q. Kindly describe in detail what your duties were at the Nashville Bank and Trust Company during the period, 1956 until 1964.

A. Well, I'd say I spent about approximately seventy per cent of my time in the bank, and probably thirty per cent outside of the bank, working for various charities and fund raising and soliciting business.

Q. You solicited business; how did you do that, sir?

[fol. 672] A. Well, I just went and called on newcomers, customers of other banks.

Q. And what did you say? How did you present your case to newcomers and customers of other banks?

A. Well, I would just go in and say, I'm Kirby Primm, employed by the Nashville Bank and Trust Company, and we don't have the largest bank in town; we got a good little bank down there, we are struggling. You know just use a sales pitch.

Q. Were you successful in these solicitations many times?

A. Well, I'd say from December, 19—December 31, 1955, the bank deposit was $21,475,000. The bank had the greatest year in 1956, that's when Mr. Hackworth came there, on February 1, 1956, the first year under Mr. Hackworth, the bank deposit increased from $21,475,000 up to $27,-730,000. That was the best year the bank had under Mr. Hackworth, 1956.

In 1957, the bank went up approximately a million two hundred thousand dollars. The bank had a pretty good year in 1958, deposits went just a wee bit over thirty-three million dollars. In 1959, the bank went just a wee bit over thirty-seven million dollars.

In 1960, the bank just had a fair year, went up approximately two million dollars. '61, the bank had a good year, went up approximately five million dollars. '62 [fols. 673-674] the bank had an increase by $940,000; and '63, the bank increased by $235,000. The year end of '63, the deposit was $45,457,000.

Q. Do you take the entire credit for this growth together with Mr. Hackworth?

A. Well, I'd say it was a team effort. I'd say Mr.

Hackworth—I hate to say I—but I would say that Mr. Hackworth and I was responsible for most of the increase.

* * * * * * *

[fol. 675] A. So I talked to Mr. Benedict, and told him that—I definitely was leaving the Trust Company. I was through, and that I was getting ready to start over in life. I was a great believer in it's not where you start in life, it's where you end up, and I told him I was ready to go, and so I came back and told Mr. Hackworth—that was on the morning of the 24th.—told Mr. Hackworth I [fols. 676-682] was through with the Trust Company, I was going to go to work for the First American National Bank. And so Mr. Hackworth got up behind his chair, and said, Kirby, are you getting ready to destroy the bank? And I said, Mr. Hackworth, I'm not that important, so that's my ——

* * * * * * *

[fols. 683-693] Q. How would you appraise the general level or capability among the officer staff of the bank?

A. Well, in my opinion the trust department of the Trust Company could handle any trust matter. But, on the commercial side, I would say—I would have to say, to be honest—it was somewhat limited.

* * * * * * *

[fols. 694-701] A. Frankly the Trust Company just didn't —just wasn't moving fast enough to suit me, Mr. Minicus.

Q. I didn't ask you that question.

A. We had our ups and downs, but I repeat again that the majority of the people was happy there, with the exception of two people, we was all happy. Of course we had our ups and downs.

* * * * * * *

[fol. 702] Q. When you did solicit ——

A. Yes, sir.

Q. —did you solicit accounts from Third National Bank that had been in Nashville Bank and Trust Company?

A. Frankly, I was putting concerted efforts on the Nashville Bank and Trust Company.

Q. What was the reaction of the so-called food [fol. 703] accounts that were in Nashville Bank and Trust Company and later in Third to your solicitation by First, for First?

A. You want to repeat that again?

Q. What attitude did you encounter on the part of the so-called food accounts when you attempted to persuade them to leave the Trust Company and later Third and come with First American?

A. Now the first eleven days in March, I was really working on savings accounts, because the Nashville Bank and Trust interest paying period was March and September.

Q. Are the food accounts savings accounts?

A. No, sir, and I'll lead up to this.

And after the merger was announced on the 12th day of March, which was on Thursday, and that's when I started soliciting the commercial accounts for the bank.

* * * * * * *

[fols. 704-724] A. Of course when we went to a lot of the suppliers, they said, "I know Mr. Hill has resigned from the board, and Mr. Thweatt." And some of the food accounts said, "Now, we will move on over there. We will either split the account with you"—a lot of these accounts were split. Some of the accounts moved over a hundred percent.

[fols. 725-726] Cross-examination.

By Mr. O'Malley:

* * * * * * *

[fol. 727] Q. Now is there any extended activity or any increased activity in the solicitation of new accounts as to any particular group of customers under Mr. Hackworth?

A. Well, I would say through the automobile finance department, we got a lot of individual accounts, and through the mortgage loan department we was able to pick up some nice accounts, and through the—Mr. Hill's interests,

and Mr. Hackworth's connections, that we was able to get a lot of accounts.

I know that some of the large corporations, I know put some complimentary money in our bank, and several of Mr. Hackworth's friends. Mr. Hill and Mr. Hackworth, I would say, was responsible for the growth of the company. I don't know how effective I would have been if I hadn't had Mr. Hill and Mr. Hackworth. I just don't know, but I was making the calls though.

* * * * * * *

[fol. 728] Q. Well, let's put it this way. Did the bulk of these come from Mr. Hackworth's friends and Hill Company suppliers?

A. Before Mr. Hackworth came there, of course I know you don't want the list of these accounts, but I could just give you the accounts that we had on the books before Mr. Hackworth that was already banking with the bank through Mr. Hill's interest, but Mr. Hackworth was great—he had a lot of friends, and he had a lot of substantial friends that had wealth, and—of course we did manage to get some accounts through the Hill Company after Mr. Hackworth come, but I would have to say that Mr. Hackworth and Mr. Hill was responsible for the growth of the bank. There was a lot of suppliers there before Mr. Hackworth came there.

[fols. 729-730] Q. Did you keep any percentages, Mr. Primm, as to the increase in the amount of supplier money, Hill Company supplier money that went into Nashville Bank and Trust Company between 1956 and 1960?

A. No, sir, but I can say this to you that less than fifteen per cent of the money that the Hill Company spent was re-deposited back into the Nashville Bank and Trust Company, because I used to birddog that account.

Q. What do you mean by that, sir?

A. I used to check those checks and see where it was deposited.

* * * * * * *

[fols. 731-736] Q. Due solely to your efforts and from Hill company suppliers?

A. Not my efforts. I would say Mr. Hill and Mr. Hackworth.

Q. That you obtained as a result of your solicitation, is the question I am asking. Is that right?

A. Just say my efforts.

Q. Were you the one who made the personal solicitation, Mr. Primm, on this four million dollars worth of increase?

A. Well, I would say that Mr. Buquo and myself and Mr. Hackworth. We all used Mr. Hill's name. He had such a great name that we did.

* * * * * * *

[fol. 737] By Mr. O'Malley:

Q. You indicated, I believe, in your direct testimony that you used some kind of leverage in the Hill [fol. 738] accounts. Can you describe precisely what you meant by that?

A. Yes, sir. My approach would be like this. "Mr. Hill owns the bank; he is spending a substantial amount of money with you. If he is good enough to spend money with you, why can't you do some banking with us?"

Q. Did you ever indicate to a customer that he might lose the Hill Company as a customer if he didn't deposit with the Nashville Bank and Trust Company?

A. I am just thinking. I don't know whether I did or not, but I would have liked to, at times.

Q. Did you ever imply that to a customer?

A. I could have, yes.

* * * * * * *

[fol. 739] Q. Did you ever indicate to a supplier that if [fols. 740-741] he deposited with Nashville Bank and Trust or did business with Nashville Bank and Trust Company that his products might have a place of preference on the Hill Corporation's store shelves?

A. Yes, sir.

* * * * * * *

[fol. 742] Q. Have you observed a growth in the economy [fol. 743] of this community?

A. Yes, sir.

Q. Have you observed a more rapid growth in the last five years than you did in the five years prior to that time?

A. '58? I would say yes, sir.

Q. Would you say that while you were at Nashville Bank and Trust Company during at least the first three years of this latter five-year period, that Nashville Bank and Trust Company kept pace with the growth of this community?

A. Are you speaking of ——

Q. Its growth; whether its growth kept pace with the growth of Nashville.

A. '61, '62 or '63?

Q. Yes, sir.

A. I would have to answer no.

Q. Mr. Primm, I ask if you recall this statement. I stated to you the chart showing the deposit structure of Nashville Bank and Trust Company seemed to level off about 19—and I said, well, somewhere between 1960 and '61. Quoting your roply: "I would say they leveled off at 1960."

Is that your testimony now?

A. I would say they leveled off after 1961.

Q. What was the reason for the levelling off, Mr. Primm?

[fol. 744] A. You can do so much on friendship. You can get so many complimentary accounts. They all have got friends. I would say the rest of it would boil down to convenience. Complimentary accounts—like I say, we all have friends. You can get complimentary accounts; you can get complimentary bank balances.

But you can just go so far on friendship, and that's all.

Q. Is it your testimony, then, that basically this was Mr. Hackworth's friends and your friends and the Hill Company accounts, and that you just couldn't get any more out of them after about 1960 or '61?

A. I would say that Mr. Hill and Mr. Hackworth's friends —I think the statement will show that after 1961—the bank only went up in 1962, $940,000, and in 1963 it went up $235,000. I showed you that the bank did level off.

I would have to say it did. But, in spite of that, still in 1962 they paid $23.30 per share. They still made money. But deposit-wise, they did level off.

Q. Was there any other factor that would be responsible

for a plateauing or levelling off of deposits? May I suggest convenience of the customers?

A. I would have to say—I think I told you it was just convenience.

Q. What do you mean by convenience?

[fols. 745-752] A. Branch banking.

* * * * * * *

[fols. 753-762] From your knowledge, do you know what type of ledger books National Bank and Trust Company kept?

A. In which department?

Q. Let's take the mortgage loan department, for example.

A. Pen and ink ledger.

Q. How long had that type of ledger been used in that department?

A. It was being used in 1939; they had the same procedures in 1963.

* * * * * * *

[fol. 763] Q. And you indicated that it went up, the deposits went up roughly five million dollars from '60 to '61?

A. That's correct.

Q. Now, you can explain any part of that large growth of deposits to any factor other than solicitation of commercial accounts?

A. Well, frankly, I would say fifty-two per cent represented state and government funds.

Q. Additional state and government funds?

A. Yes, sir.

Q. Now, excluding government deposits, Mr. Primm, what percentage of the growth of Nashville Bank and Trust Company, during the Hackworth period, let us say, was obtained by you, Mr. Hackworth, and Mr. Hill?

A. I'll say eighty per cent.

Q. Now during this period of time, Mr. Primm, were you the primary outside solicitor for new business?

A. Along with Mr. Buquo, yes.

[fol. 764-765] Q. How important to the institution, to the Nashville Bank and Trust Company, was Mr. Hackworth?

A. I realize no one is indispensable, but I would say Mr.

Hackworth would come awful close to that, to that organization.

* * * * * * *

[fol. 766] Q. Why did you think you could do better in another institution rather than Nashville Bank and Trust Company?

A. I had been told for many years that I should be doing better, but on account of the age factor, they didn't want to upset anyone or create any feeling, and they didn't think they should do it.

Q. You are talking about salary, now, right?

A. That's correct. But my primary—I am going to repeat again—my leaving the Nashville Bank and Trust Company, salary was important, but I want to say again the reason I went to the First National Bank, I just like that competition, to compete with some—you know, I always like to compete with the best.

Q. Weren't you able to compete when you were with the Nashville Bank and Trust Company?

A. With the group down there? I am not talking about to another institution. I am talking about individuals in the institution.

Q. I wonder if you can explain that? I am not quite clear what you mean.

A. I am going to say this. As you know, in the present bank you have got a lot of young men over there that are doing fine. I just felt——

[fol. 767] Q. We are talking about First American?

A. That's correct. I just felt like I could compete with them, too. I just wanted to have an opportunity to do so.

Q. You didn't feel you had that opportunity at Nashville Bank and Trust Company?

A. They had some fine people down there, but I think I made the statement yesterday, the bank just wasn't moving quite fast enough to suit me.

Q. Mr. Primm, when you were appointed assistant vice-president in 1956 by Mr. Hackworth, let's say immediately after your appointment, can you give us an approximate idea of the salary you were making then?

A. Frankly I would rather not; but if you insist I will.

Mr. Minicus: I think that's beyond the scope of the direct examination. I don't think his salary has entered into the testimony at all yesterday.

The Court: That's right. You don't insist on that, do you?

Mr. O'Malley: I beg your pardon, sir?

The Court: You don't insist on that, do you?

Mr. O'Malley: I won't insist on 1956. If on the salary question it becomes necessary, Your Honor—frankly I believe the salary here goes to the structure—may I rephrase that question without asking the specific dollar amount.

[fol. 768] The Court: Yes.

By Mr. O'Malley:

Q. Was your salary in 1963 higher than it was in 1956?

A. Yes, sir.

Q. By how much, percentage-wise?

A. Approximately forty-five percent.

* * * * * * *

[fol. 769] Q. I believe the question was: Did Mr. Hackworth explain the reasons for his failure to give you increases in salary?

[fol. 770] A. This is a repetition of just what I said a few minutes ago. Mr. Hackworth talked to me from time to time. He said he realized I should be making more money, but on account of the age factor, if he raised me above certain individuals it might create a feeling.

Frankly, I never asked Mr. Hackworth for a raise. I asked nobody for a raise.

Q. It is your testimony that he stated you deserved a raise?

A. That's correct.

Q. But he couldn't give it to you because it might create hard feelings among the older men?

A. That's correct.

Q. Upon leaving to go to First American, did you receive a salary increase there?

A. Yes, sir.

* * * * * * *

[fol. 771] A. I did receive approximately sixty percent more at the First American than I earned in 1963.

Q. In other words, for seven years at Nashville Bank and Trust Company you had a total increase of 45 percent and immediately upon going to First American you had a sixty percent raise?

* * * * * * *

[fol. 772-780] A. On March 2 I started soliciting business for the First American National Bank. It was on Monday.

Q. Do you have any measure of your success in soliciting accounts for First American?

A. The only thing I can swear to, the merger was announced on Thursday, the 12th. The Nashville Bank and Trust Company was paying interest, and the interest period was March and September.

I would say the first twelve days in March 1964—this is the only thing I can be exact on, and that's the reason I am going to give it to you—the deposits amounted to $1,-298,000.

Q. Were they savings or firm accounts or individual accounts?

A. Just some of my personal friends just trying to help me get on record over there, savings and checking.

Q. Did any of this money come out of Nashville Bank and Trust Company?

A. I say the majority of it did.

* * * * * * *

[fol. 781] Q. Did Nashville Bank and Trust Company have automation?

A. No, sir.

Q. Did they have a computer?

A. No, sir.

Q. Do you consider computers and automation essential to the acquisition of large corporate accounts?

A. Yes, sir.

Q. Do you consider that large corporate accounts are necessary to the growth of a bank?

A. Yes, sir, both. You've got to have your large and you've got to have your small. You've got to have some of [fol. 782] those key executives in the firm.

Q. For example, could you have handled AVCO account?

A. Since they have got the computer system—

Q. No, before, Nashville didn't have it.

A. Let me get through.

Q. I'm sorry.

A. I say since they have the computer system out there, the IBM checks, why we could not.

Q. Now are you aware, Mr. Primm, based upon your observation and your travels throughout the community and your experience in the banking industry, of any improvements instituted by the management of Third National Bank in the Nashville Bank and Trust Company?

A. You are talking about employee-wise?

Q. Any improvements you may be aware of, Mr. Primm?

A. Well, yes, sir.

Q. What would they be?

A. It's my understanding, and I've seen it, what the Third National Bank has done for the old Nashville Bank and Trust Company employees, I think it's fine, I'm happy for them, and I would have to say for the good of employees, who I was associated with for many years, that [fols. 783-793] they are better off under the present management than they were under the old.

* * * * * * *

Redirect examination.

By Mr. Minicus:

* * * * * * *

[fol. 794] A. I would like to repeat again what I said yesterday. Under the leadership of Mr. Hill and Mr. Hackworth, I don't know how effective I had been soliciting business. I really don't know. Mr. Hill and Mr. Hackworth are really due credit for the growth of Nashville Bank and Trust Company.

Q. Have you been pretty effective in soliciting business since you left the Nashville Bank and Trust Company?

A. I would say I have got more friends than I deserve, yes, sir.

Q. You ran through a list of some of Nashville Bank and

Trust Company's largest accounts yesterday, and said you assisted or solicited or helped in obtaining those accounts for the bank—things like Beatrice Foods.

Since you were the only fulltime solicitor, can you tell me who else in the bank could have called regularly on those people and would have solicited those accounts on a regular basis other than casual calls?

A. Would you like to have the names? Do you want the names.

Q. I asked if there was anybody who put their full time in on calling on such accounts.

A. Mr. Buquo; Mr. Thompson.

Q. Didn't they have other duties in the bank?

A. That's right. But you said could anybody else put their full time——

[fol. 795] Q. Put their full time in on it.

A. I was the only full-time outside man the bank had.

Q. So that if there was an important account to be had, it would probably fall within your province ~~to go~~ out and get it. It that not true?

A. I would say mine or Mr. Hackworth's.

Q. You discussed this morning payroll accounts, the difficulty Nashville Bank and Trust Company would have in handling payroll accounts. Are there other types of accounts than payroll accounts maintained in banks around town by these large business corporations?

A. Yes, sir.

Q. What are some of these accounts?

A. For example, the Trust Company had a very nice major insurance dividend account. Since the Trust Company did not have any automation, another major bank used to reconcile the account for the Nashville Bank and Trust Company.

Q. But Nashville Bank and Trust Company then was able to maintain that account?

A. That's right.

Q. Did Nashville Bank and Trust Company have any accounts with Genesco?

A. Yes, sir.

[fol. 796] Q. Did they have any accounts with Gates Rubber Company?

A. Yes, sir.

Q. Did they have any accounts from Oman?
A. Yes, sir.
Q. Can you name any of the other large business corporations around town from whom Nashville Bank and Trust Company had accounts?
A. Yes, sir.
Q. Will you name them, please?
A. Well, Sealtest Foods. Beatrice Foods. Purity Dairies. Thompson Grain. John Bouchard.
Q. What business is John Bouchard in?
A. Air conditioning and heating.
Q. What business is Genesco in?
A. Everything.
Q. I mean, the clothing line?
A. Its principal line is shoes.
Q. Gates is in what business?
A. The tire business.
Q. And Oman?
A. Structural.

* * * * * * *

[fols. 797-798] Recross-examination.

By Mr. O'Malley:

* * * * * * *

[fol. 799] The Court: What effect would it have if they continued on this basis in the mortgage loan department?

A. I can answer that question this way, without going into details. To keep abreast of times, in my opinion the automation system is a necessity.

* * * * * * *

[fol. 800] By Mr. O'Malley:

Q. Your testimony, I believe—I just want to straighten this out—is that Nashville Bank and Trust Company had no credit department employees as such?
A. Compared with my present bank, true.
Q. And you have thirty at First American?
A. I believe I said approximately thirty.

Q. Approximately thirty?
A. Yes.

* * * * * * *

[fol. 801] Q. You indicated that the Trust Company had to depend on another major bank for dividend accounts, to handle the dividend accounts?

A. I believe I stated that another bank, since the Trust Company did not have the automation system, they had another bank to run the checks and reconcile the account, which represents several thousand checks.

Q. Is that another bank here in town?
A. Yes, sir.
Q. Which one?
A. First American.
Q. What kind of accounts were these? I believe you mentioned Genesco and Gates Rubber and a few others. What kind of accounts were these in the Nashville Bank and Trust Company?
A. Accounts with not a lot of activity.
[fol. 802] Q. Did they require any particular work on the part of the bank to service them?
A. Very little.
Q. Were they more in the nature of complimentary accounts?
A. No, one of the companies had a substantial line of credit, and the other one didn't, but they was nice accounts. I know at one time Genesco had several accounts there.
Q. I mean they didn't require the handling of payrolls or dividends or coupons or anything of that sort, did they?
A. No, sir.
Q. Did Nashville Bank and Trust handle its own bond work?
A. You know, Mr. Sory handled that, and I'm of the opinion that the Trust Company had assistance from another bank, but I'm pretty sure about that, but since I—how much now I really don't know.
Q. What other bank was that?
A. Really, I wasn't over there, and I wasn't handling that phase of it, so that I'd say they did have some assistance from another institution.
Q. What institution would that be?

A. First American.

[fol. 803] Mr. O'Malley: No further questions.

Redirect examination. (Further)

By Mr. Minicus:

Q. Is it generally and normally the function of a correspondent bank to perform functions for its customer banks, which the customer banks are not equipped to perform themselves?

A. Yes, sir. Since I'm not in the correspondent banking department, and of course I know some functions of it, but there were, how much I'm not qualified to say.

Q. And is there a benefit for the large correspondent bank in the way of compensating balances and other things for performing these services?

A. Yes, sir.

Q. Did First American have such a balance from the old Trust Company?

A. Yes, sir.

Q. Was it a large balance?

A. Yes, sir.

Q. Do they have it today?

A. No, sir.

* * * * * * *

[fols. 804-805] William F. Earthman, (Resumed) a witness called to testify by and in behalf of the Plaintiff, having been previously sworn, resumed the stand, was examined, and testified further as follows:

Direct examination. (Continued)

* * * * * * *

[fol. 806] Q. We would like to move ahead now, Mr. Earthman, and discuss for a few moments the matter of personnel at the Commerce Union Bank. Have you ever had an officer vacancy at Commerce Union Bank that could not be filled from within the bank?

A. I think I could answer it better this way. I think there have been some positions that have been created that possibly we felt could be filled better from the outside.

Q. Have there ever been instances when there was a vacancy among your existing officer complement which could not be filled from within the bank or which you felt could be better filled from the outside?

A. We felt it could be better filled from outside of the bank.

[fol. 807] Q. And how would you go about filling such vacancies or such newly created positions.

A. We would use the normal procedures that everyone uses. We talk to management consultants and to recruiters, and people that we know in the various lines of business hat we're specifically interested in.

Q. Have you been successful in filling any of those vacancies?

A. Yes, sir.

Q. Could you please state for the Court some examples of sources of officer personnel that you have obtained for Commerce Union Bank by going outside of the bank?

A. We have one man from a very large insurance company came from outside of Nashville; a man from a bank outside of Nashville; a man that was in the public relations field within Nashville. I'm sure there are other examples.

Q. Did you at any time obtain a man from the State of Tennessee?

A. Yes, sir, from the Industrial Development Department.

Q. Industrial Development Department?

A. Yes, sir.

Q. And what position does he have with Commerce Union Bank at this time?

A. He is in charge of our own industrial development department.

[fol. 808] Q. Have you ever obtained personnel from brokerage firms in Nashville?

A. Yes.

Q. Do you recall obtaining personnel from any other sources in the Nashville community, non-banking sources?

A. Offhand, Mr. Weinbaum, I don't.

Q. But the fact is that you have gone outside of your

bank and obtained personnel, most of whom have not had previous banking experience as officers for your bank, is that correct?

A. Yes, sir.

Q. Do you regard the hiring of officers from outside of your bank to be a very rare circumstance?

A. Well, in our case, it is not a rare circumstance.

Q. And have these people worked out satisfactorily in your bank?

A. In practically every case.

Q. When a vacancy is created, or when a new job is created, do you find that people seeking jobs walk in the door looking for them or do you have to go out and get them?

A. No, you have to go out and find the talent.

Q. Do you have any views as to whether a bank president would have to have had previous banking experience in [fols. 809-810] order to be a successful banker, run a bank properly?

A. Well, I think it's most helpful to have had some previous experience.

Q. Do you believe it necessary?

A. I wouldn't say necessarily that it was necessary, but I think it's a desirous thing.

Q. You are aware, of course, of the fact that Mr. Hackworth had no previous banking experience?

A. Yes, sir.

Q. Are you not?

A. Yes, sir.

Q. In your judgement, did Mr. Hackworth do a satisfactory job in running the bank?

A. He did do a satisfactory job.

* * * * * * *

[fol. 811] Q. Assuming, Mr. Earthman, for the purposes of argument, that there was no one at the Trust Company deemed qualified to assume the presidency of the bank after Mr. Hackworth's retirement, would you have an opinion as to the likelihood that Mr. Weaver and his associates could have obtained satisfactory management succession?

A. I'm sure that if it were not available within the or-

ganization, that for a price and under the right conditions, I'm sure that they could have possibly found someone.

Q. Would this also be applicable, Mr. Earthman, to the filling of other top level officer vacancies in your opinion?

A. Under the right circumstances and conditions, I think it could have been done. I think it would have been difficult.

Q. You have testified that Commerce Union Bank has gone outside of the bank and obtained satisfactory management personnel for your needs, is that correct?

A. That's corerct, but there's a relative size here, where I think it would be easier for us, due to our larger size, than the Trust Company to attract those people.

Mr. Weinbaum: I have no further questions, Your Honor.

The Court: Cross examine.

[fol. 812] Cross-examination.

By Mr. Hooker:

Q. Mr. Earthman, has the merger of the Third National Bank and the Nashville Bank and Trust Company, affected the Commerce Union Bank's ability o compete in this market?

A. I would say, Mr. Hooker, that the competition is still and if not more so even more fierce than before.

Q. How would you characterize the competition in the Nashville banking market now?

A. As extremely active.

Q. Is it as competitive as it was in 1963?

A. Well, I would answer it this way. I would say it certainly is not less competitive than it was.

Q. Do you normally compete with your correspondents?

A. Do I normally compete with my correspondents?

Q. Yes, sir.

A. No.

Q. Was the Nashville Bank and Trust Company a correspondent of the Commerce Union Bank?

A. On an inactive basis.

Q. Does it still maintain an account with the Commerce Union Bank?

A. Yes.

Q. To what extent did you come in contact with the

[fol. 813] Nashville Bank and Trust Company in competition for banking business?

A. In the small and medium size business and individual accounts.

Q. It was not frequent, was it?

A. Our activities—our competitive forces with the Trust Company, when we met them, were extremely aggressive.

Q. Right now—

A. The point is that we did not meet them on nearly the numerous times that we met our other competition.

Q. Did you come in contact with them at all in the competition for important loans, sizeable loans?

A. Not to speak of, no.

Q. When you did come in contact with the Nashville Bank and Trust Company, what officers or directors were primarily involved?

A. Well, the top people in the bank, Mr. Hill, Mr. Hackworth, Mr. Thompson, Mr. Primm.

Q. What percentage of this competition would you estimate was attributable to Hill, Hackworth, or Primm?

A. Well, I think I would say the majority.

Q. Is it a competitive advantage to a bank to know whose checks are going through its competitor?

A. Yes, sir.

Q. Would you think of letting your checks clear through [fols. 814-815] First American?

A. No, sir.

Q. What is the loan limit of a bank? Tell us what that denotes, that term.

A. Well, that is the actual dollar amount that a bank can lend any one customer.

Q. What significance does it have?

A. Well, of course the higher the loan limit, the larger corporate account you can actually acquire.

Q. What is its significance for the future development of the community?

A. Well, the loan limit of a bank must grow at least as fast if not faster, and I think more so in—that we should grow faster than the development of the community in order to take the leadership in pushing the economy forward.

* * * * * * *

[fol. 816] Q. Mr. Earthman, would a bank without a funded pension fund and below-average salaries have difficulty obtaining qualified people from outside the bank?

A. Yes, sir.

Q. Would it have been easier for Commerce Union to obtain executives from the outside than the Nashville Bank and Trust Company to, in your opinion?

A. Yes, sir.

* * * * * * *

[fol. 817] Q. What is the source of most new trust business that banks get?

A. From your present commercial clients.

Q. Mr. Earthman, I believe Mr. Weinbaum asked you about various services offered by the Third National Bank and by the Commerce Union, but not offered by the Nashville Bank and Trust Company. Among those services were mobile home financing, correspondent bank facilities, and purchase of dealer retail paper.

I think he asked you about a good many others. Do I understand your testimony correctly that you say that these are important services for a commercial bank to render its customers in Nashville?

A. We feel that they are important.

Q. Mr. Earthman, to what person do you relate the [fols. 818-820] change in the nature of the Nashville Bank and Trust Company that took place around 1956?

A. Mr. Hackworth.

Q. Mr. Earthman, does a director of a bank gain knowledge of a bank's problems ~~through his~~ service on the board of directors?

A. Yes, sir.

Q. Had Mr. Hackworth been on the board of directors of the Nashville Bank and Trust Company before he took over as president?

A. As I recall, he had, yes, sir, Mr. Hooker.

Q. Did the Nashville Bank and Trust Company really merchandise many of the services on the list read to you of the list of services offered by them, the list read to you by Mr. Weinbaum?

A. Not to the degree that the rest of them in Nashville did.

* * * * * * *

[fol. 821] Q. I believe you stated that after the merger was announced you actively solicited accounts of the Nashville Bank and Trust Company. Why hadn't you done this before?

A. Well, we solicited them, of course, before, but not as actively as we were soliciting then because the Trust Company had a nice deposit with us.

[fol. 822] Q. Getting back to the subject of loan limit, Mr. Earthman, have you ever had any rights offerings or done anything else with respect to your bank which would serve to increase its loan limit?

A. Yes, sir.

Q. Why did you do that?

A. Well, for many reasons. One of the reasons, one of the primary reasons, would be for increasing our loan limit. Other reasons, stock dividends for stockholders.

Q. Because you though it was important to the convenience and needs of this community?

A. We thought it was good for the bank and because it was good for the community.

Q. Is the problem of filling one position in a bank, even the president's position, inherently different from filling many positions? Is a re-staffing problem, if you had a great many positions that needed to be filled, inherently different from just getting one person?

A. I would say it is a very difficult thing, I think, in both fields. But I think if you had a wholesale proposition to do, it would be extremely difficult.

Q. Mr. Earthman, do you remember when it was announced in the paper that Mr. Weaver had contracted to buy the Hill Company stock in the Nashville Bank and Trust Company?

[fol. 823] I remember the approximate time, yes.

Q. Was it approximately the 24th of January?

A. Mr. Hooker, I would say so. It was somewhere, I thought, around the middle of January. Maybe it was the third week.

Q. Do you remember whether it was announced in the paper before or after the date of the actual signing of the contract?

A. I don't know, sir.

Q. Let me refresh your recollection. Isn't the date of that

contract the 14th of January, and didn't Mr. Craig and Mr. Weaver come to your bank on the 23d of January to apprise you that they had bought it, and didn't it come out in the paper on the 24th?

Mr. Weinbaum: Excuse me, Your Honor. We object. The witness has indicated that he wasn't certain. He thought it was around the middle of January that this all occurred.

The Court: He can ask him if that refreshes his recollection.

A. Mr. Hooker, I don't recall. I do remember when Mr. Craig and Mr. Weaver came by the bank. The next day, as I I recall, it was publicly announced. When they actually signed the conract with Mr. Hill, I don't recall. I am sure it was prior to the 24th.

[fol. 824] By Mr. Hooker:

Q. You didn't check your appointment book to see exactly when it was you had your first meeting with Mr. Weaver after the day he and Mr. Craig came by to tell you, did you?

A. No, I did not.

Q. You haven't checked that?

A. No.

Q. Where did that meeting take place?

A. Mr. Weaver's office at the National Life.

Q. It took place at Mr. Weaver's office at the National Life?

A. Yes.

Q. Let me refresh your recollection. Didn't you have a meeting with Mr. Criswell and Mr. Weaver in the Green Hills Office Building? Wasn't that the first meeting you had with them after that?

A. No, I really think, Mr. Hooker, that my first meeting was just privately with Mr. Weaver. Then I did have subsequent meetings with Mr. Criswell and Mr. Weaver.

Q. Who made the initial contact when you tried to buy the Nashville Bank?

A. I did.

Q. Who made the pitch—the buyer——

A. I did.

* * * * * * *

[fols. 825-826] Redirect examination.

By Mr. Weinbaum:

* * * * * * *

[fols. 827-829] Q. Do you know of any reason why Nashville Bank and Trust Company's salary structure would not be competitive with those of your bank with regard to salaries in Davidson County?

A. Why they would not? I can't answer that.

Mr. Weinbaum: Would you read that back to Mr. Earthman, please?

(Reporter read the last question.)

The Witness: I presume that this was the policy of the bank, Mr. Weinbaum.

* * * * * * *

[fol. 830] Q. Are you aware of the increment to Third National Bank's lending limit as a result of the merger in question?

A. I don't know the exact amount, but it obviously went up.

* * * * * * *

[fol. 831] Recross-examination.

By Mr. Hooker:

* * * * * * *

[fol. 832] Q. When you first met with Mr. Weaver after he had bought Nashville Bank and Trust Company, did you offer him a five year term loan to carry the cost of the stock, the prime rate?

A. I offered him a loan at the prime rate.

* * * * * * *

[fol. 833] Robert M. Stephenson, a witness called by and in behalf of the plaintiff, after having first been duly sworn, was examined, and testified as follows:

Direct examination.

By Mr. McKenna:

* * * * * * *

Q. And what is your occupation?

A. I'm a vice-president of the Federal Reserve Bank of Atlanta.

Q. And how long have you been in that capacity?

A. Since 1964.

Q. Mr. Stephenson, at this time, would you sketch your employment history for us?

A. I was employed by the Federal Reserve Bank of Atlanta in 1934 as an assistant to the statistician; about 1937 I was made an assistant examiner; in 1939, an examiner; and in 1942 a trust examiner; and chief examiner about 1949; and assistant vice-president in 1953; and in 1954, [fols. 834-836] I was transferred to our New Orleans Branch where I was assistant manager; in the fall of 1961, I went to the Board of Governors in Washington for a tour of duty; and the first of January of the following year, 1962, I went up for a year's assignment as special assistant director in the Division of Examinations; and then I came back to Atlanta in January, 1963, and I was second officer in the Bank Examination Department; and then in July of 1964, I was made vice-president of the Federal Reserve Bank and placed in charge of our supervisory activities in the Sixth Federal Reserve District.

Q. And are you in charge of bank examinations?

A. Yes.

* * * * * * *

[fol. 837] Q. With respect to the check collection, is this service performed only for member banks?

A. No, it's performed for all banks that agree to pay their checks at par when received through the Federal System.

Q. And how would a non-member bank participate in this check clearing function?

A. It would send its checks to us through a member bank, or clear its checks through us, clear its checks through a member bank.

Q. Would that generally be a correspondent of the member bank?

A. That's right.

Q. I wonder if you could sketch for us how—let's say for example, a check drawn on the Nashville Bank and Trust Company, that was cashed in St. Louis or let's say Los Angeles—that's further—how that check would clear back through to the Nashville Bank and Trust Company.

A. Well, the person that deposited that check in a bank in Los Angeles would—I mean he would include it in his [fol. 838] deposit. That bank would send the check to the Federal Reserve Bank in Los Angeles which is a branch of the San Francisco Fed., and the Los Angeles branch would send it to the Federal Reserve bank here at Nashville, and that bank would send it to the—to its member bank that cleared the Nashville Bank and Trust Company's checks, and that member bank here in Nashville would pay the Federal Reserve Bank for the check.

Q. So if the service would be performed for non-member and member banks alike?

A. As far as I'm concerned.

Q. What you perform, it would be identical?

A. One would be just like another.

Q. I see. Sir, with respect to these other services that you mentioned, how would a non-member bank, for example, be able to obtain currency and coin?

A. It would order that currency and coin through a member bank. We would ship it direct to the non-member bank and charge the account of the member bank for it.

Q. With respect to—you mentioned you made loans to member banks, is there any other way a non-member bank could get this equivalent service?

A. It could obtain this service normally through its city correspondent.

Q. And it's——

A. I don't mean—I didn't mean from the Federal Re-

[fol. 839] serve Bank, I mean it would be borrow money—its city correspondent would lend it money.

Q. I see. With respect to these various services, sir, that we have discussed, would you, in your opinion, would a non-member bank suffer any competitive disadvantages by not being a member of the Federal Reserve System in these areas?

A. I don't think so. When there's no strong reason for a non-member bank to join the system in ordinary times, although we are very happy to have them join, but in times of stress, it might be difficult for its correspondent bank to make advances to it.

[fols. 840-841] Q. But under normal conditions, and in the normal operation of the bank, a non-member bank would suffer no disadvantages by not being a member. Is that correct?

Mr. Hooker: I object to the form of the question, if Your Honor please.

The Court: It is leading.

By Mr. McKenna:

Q. Mr. Stephenson, do you know how the Nashville Bank and Trust Company cleared their checks?

A. Not to my personal knowledge.

Q. Have you made any studies or established how they cleared their checks?

A. I understand that they clear them through First American National, or they did clear them before it merged.

Q. In your opinion did the Nashville Bank and Trust Company—would they have suffered any competitive disadvantages by clearing their checks through the First American National Bank?

A. I never have heard of any.

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[fol. 842] By Mr. McKenna:

Q. You stated these were average operating ratios; is that correct, Mr. Stephenson?

A. That's right.

Q. By whom were these prepared?

A. These were prepared by the Research Department of the Federal Reserve Bank of Atlanta.

Q. Could you tell us in some detail why they are prepared and generally what they reflect?

A. They are prepared from reports of condition and reports of income and dividends that are submitted to the Federal Reserve Bank by member banks in the Sixth District.

[fol. 843] The purpose of them is for comparative purposes with other banks. In other words, these ratios group banks together. Then, after preparing these ratios, you could compare your individual ratio with that of other banks that are in your same size group.

Q. Mr. Stephenson, I would like to show you Government Exhibit No. 1012 and then I would like to show you a copy of the same document.

A. All right.

Q. Do they appear to contain the same information?

A. They appear to.

Q. The figures are identical; is that correct?

A. Yes.

Q. Mr. Stephenson, I would like to direct your attention to the first column of figures on Government Exhibit No. 1012 and ask you what you find there.

A. That's a column indicating the net current earnings as related to capital accounts.

Q. These relate to what banks?

A. They relate to Nashville Bank and Trust Company, the Third National Bank, First American National Bank, and Commerce Union Bank. Then we have figures for all member banks in the Sixth District and Federal Reserve member banks in Tennessee broken down into two groups.

The first group is over $50 million deposits, and the sec-[fol. 844] ond is from $10 to $50 million deposits.

Q. Mr. Stephenson, by comparing the ratios that we have in that first column of figures, are you able to draw any conclusions relative to the banks?

A. They are fairly well in line except I would say the Third National and the First American National compare very favorably with the others. They are above average. They have above average net current earnings as related to the capital account.

Q. But they do compare favorably with each other; is that correct?

A. Yes.

Q. Mr. Stephenson, I would like to direct your attention to the second column of figures and ask you what those are.

A. Those are ratios that show the net income after taxes to capital accounts.

Q. What conclusions can you draw from this group of figures?

A. In this column it shows that all of the banks are pretty much in line. They are closer in line, in fact, than those in the first column. There is very little difference, very little variation, between them.

Q. With respect to the third column of figures, Mr. Stephenson, would you tell us what those figures are, what [fol. 845] those ratios are?

A. These ratios show total loans to total assets.

Q. Of what significance are these figures?

A. We use those usually to show what proportion of a bank's assets are invested in loans. We do that in connection with determining its liquidity.

Q. Does the Federal Reserve System use a loan-to-deposit ratio?

A. Yes, we do that quite often.

Q. Is there any correlation between a loan-to-deposit ratio and a loan-to-asset ratio?

A. There is a very close correlation between them. They are practically the same, except maybe ten percent difference.

Q. With respect to this third column of figures, I wonder if you could tell us what the significance as to the banks is of these figures?

A. Well, it shows as to the Nashville banks, it shows the Nashville Bank and Trust Company has fewer of its assets invested in loans than the other three. But the Nashville Bank and Trust Company is pretty closely in line with all Sixth Federal Reserve District Member banks and in line with those member banks in Tennessee over $50 million, but it is slightly less than those that have deposits in Tennessee of $10 to $50 million.

[fol. 846] Q. Opposite the Nashville Bank and Trust

Company you have the figure forty point nine. Would you say that figure is inordinately low?

A. No, I would think that would be within the—fairly well within the range of what we would consider—it's a little bit low on the typical side for 1962. Right at this moment it might be a little more.

Q. You mentioned range. What would the range be in the figures?

A. I would say from around 35 to 55 percent.

Q. Would these three cumulative figures show that Nashville Bank and Trust Company was at any competitive disadvantage in relation to the other three banks?

A. I don't think those figures—at least I couldn't draw any conclusion as to their competitive advantage or disadvantage. This is more of the policy of the bank as to what percentage of their investments they will have in loans.

Q. As you noticed, there are only three ratios shown here. Would you say that these ratios are more or less significant than the ratios shown on Government Exhibit 523, three of the ratios shown on 523?

A. These are among our key ratios that I presume were taken from this larger group of ratios shown on Exhibit 523.

[fol. 847] Q. Mr. Stephenson, I would like to show you Government Exhibit 612 and ask if you can identify that.

A. That's a letter I wrote to Mr. Hunt in connection with the application of the Third National Bank and the Nashville Bank and Trust Company to merge.

Q. I would like to show you Government Exhibit No. 614 and ask you if you can identify that.

A. That's Mr. Hunt's reply to my letter.

Q. Would you tell us who Mr. Hunt is, Mr. Stephenson?

A. He is an officer of the Third National Bank.

Q. Mr. Stephenson, is one of your responsibilities as vice-president of the Federal Reserve in Atlanta to conduct investigations into merger applications for the Federal Reserve Bank?

A. That's right.

Q. Did you conduct such an investigation into the merger of the Nashville Bank and Trust Company with the Third National Bank?

A. Yes.

Q. In conducting this investigation, what material or information did you consider?

A. I considered the application of these two banks to merge and the report of examination of the Third National Bank and information I received from the Federal Deposit [fol. 848] Insurance Corporation and information I received from Mr. Hunt of the Third National Bank.

Q. Why did you make the request for information from Mr. Hunt?

A. Their application showed very little information in regard to the trust activities of these two banks, and I just wanted to be filled in a little bit on that.

Q. Do you feel that the trust information is significant?

A. That's one of the principal activities of the Nashville Trust Company.

Q. Sir, with respect to this letter, I would like to ask you some questions about the information you requested. In paragraph 1 you have asked for a list of the principal banking and trust services being offered by both of the merging institutions.

Why would you want this kind of information? Of what significance is it?

A. Because they compete in specific areas in the trust field, and I just wanted to see—I was not familiar with the Nashville Bank and Trust Company's activities, and I just wanted to see exactly in what specific areas they offered trust services, and compare those with the trust activities of the Third National Bank.

Q. Were you able to ascertain whether they both offered [fol. 849] the same kinds of services?

A. I got just limited information on that question.

Q. Were you able to determine whether competition existed between the two banks for this service?

A. I presumed that from the information I received.

Q. In item number two you request information on the extent to which both banks have deposit accounts and loan accounts from the same individuals, partnerships, and corporations, and the estimate of the aggregate number in dollar amount of such accounts in each bank.

For what purpose did you want this information, Mr. Stephenson?

A. To determine if their service areas overlapped and if they were appealing to the same customers.

Q. Were you able to make such a determination?

A. If I remember—I would have to look at Mr. Hunt's letter to be sure to see that.

Q. I mean with the extent of the overlap of the service areas, were you able to make a determination?

A. I don't believe I got too much information on that question.

Q. But overall, in your analysis, in your investigation, were you able to make a determination?

A. Yes.

[fol. 850] Q. What was that determination?

A. That their service areas largely overlapped.

Q. And what was the extent of that service area?

A. I decided that Davidson County was what we considered the primary service area of both institutions.

Q. The next numbered paragraph in your letter is as follows: "Comment on the extent to which deposit and loans at the banks originate in each other's service area."

For what purpose was this information requested?

A. That was for the same general purpose—to learn the delineation of their primary service area.

Q. In paragraph number four you have requested them to give you information relating to schedule showing interest rates and service charges on loans, deposits, and trust services of the two banks, and the proposed interest rates and service charges of the resulting bank.

For what purpose did you request this information?

A. To learn if their rates were competitive.

Q. Were you able to make a determination?

A. They semed very well in line with each other.

Q. Did you feel they were competitive?

A. I did.

Q. The fifth paragraph of the letter requests comment [fol. 851] on trust department activities of the two banks and the extent to which each bank has trust department business originating in the other's service area and comparing the aggregate holdings, including the number of accounts, for each major type of fiduciary and agency appointment, including the basis for assigning book carrying values.

For what purpose was this information requested, Mr. Stephenson?

A. To try to determine the volume of trust business each bank was administering.

Q. Were you able to determine the extent of the trust business of each bank that originated in Davidson County.

A. No, I don't believe I got any really good information on that.

Q. Were you able to determine the extent of the trust business of the two banks?

A. Yes, but I don't believe I did from that reply.

Q. But overall you were able to gather this information?

A. Yes.

Q. Following the merger were you able to determine the approximate total holdings of trust accounts with respect to the merged bank and related to the other two banks [fol. 852] in Davidson County?

A. If I remember right, they had over forty percent of their trust business in Davidson County. The other two banks then would have somewhere around sixty percent.

Q. Excuse me. You mean the Nashville Bank and Trust Company had over forty percent?

A. I thought you said after the merger.

Q. After the merger.

A. That would mean that they would have over forty percent of the trust business in Davidson County.

Q. And Commerce Union and Trust American—

A. Would have the balance of the trust business.

Q. Were you able to make an estimate of the total holdings after the merger of Third National Bank and First American?

A. If I remember right, the Third National would have the largest trust business in the city. Then the American National and then the Commerce Union—in that order. But I don't remember exactly.

Q. Do you remember of the sixty percent between Commerce Union and First American, the approximate percentage held by First American?

A. Just a minute, let me do a little figuring. I believe it would have around between 35 and 40 percent, the way [fol. 853] I figure here—38 percent.

Q. And the total for First American and Third National following the merger would be about what?

A. About 42 percent.

Q. I am sorry, sir, Third National and First American after the merger?

A. It would be about 80 percent.

Q. In this investigation you covered, what particular aspects were you investigating?

A. Just the competitive factors involved.

Q. You did not investigate the other aspects of the merger, just the competitive factors?

A. No, the Board of Governors is called on only to give an opinion in regard to the competitive factors.

Mr. McKenna: I have no further questions.

[fols. 854-856] Cross-examination.

* * * * * * *

[fols. 857-858] By Mr. Farris:

Q. On page four of this report in the third paragraph from the bottom, I would like to show you the last sentence, Mr. Stephenson, and ask you to read that sentence, and then state whether or not you agree with it.

A. "It does not appear that consummation of the proposed merger would have any serious adverse effect on other banks in Davidson County."

Yes, I agree with that.

Q. You agree with that?

A. Yes.

Q. Thank you, sir.

* * * * * * *

[fols. 859-861] Q. Mr. Stephenson, going back to the matter of membership in the Federal Reserve Board, if I understood one of your answers correctly, and I hope you will correct me if I don't remember it accurately, but it was something to the effect that in times of stress, it might be more difficult to get money to a non-member bank.

I believe you indicated something to that effect.

A. I indicated that non-member banks might have more

difficulty in borrowing from its city correspondent than if it were a member of the Federal Reserve System, and just had to borrow it from the Federal Reserve.

Q. Yes, sir, they——

A. In other words, the city correspondent might have its hands full taking care of its own customers, as well as those of its correspondent bank. It might have difficulty meeting all of those demands, but if it were a member of the Federal Reserve, he would come to the same source that the correspondent bank would to obtain his borrowings.

* * * * * * *

[fol. 862] Q. Did you submit a report to the Board of Governors?

A. I did.

Q. Was this report based upon that letter?

A. That was one source of information used in preparing that report.

Q. Let me ask you this. Did this report follow in sub-[fol. 863] stance the report that you sent to—

A. It reached the same general conclusion that I did in my report.

Q. Was it your duty in making your report to consider all of the competitive factors in the area in which you investigated?

A. Yes, that—may I tell you, the Board of Governors has to prepare this report.

Q. For the Comptroller?

A. For the Comptroller, and so they asked us to present as much information or facts to them as we can develop on the competitive factors in order to assist them in preparing that report, you see.

Q. Then do you prepare also recommendations or conclusions for the consideration of the Board?

A. Not a recommendation; we don't have to make a recommendation.

Q. You just submit raw data?

A. That's right, we just reach, you might say, a conclusion, but we don't—we don't make any recommendation at all.

Q. Was the conclusion in the nature of a recommendation?

A. No, you see, we just—we draw a conclusion as to one factor. There are a number of other factors that the Comp- [fol. 864] troller considers in either approving a merger or turning it down, that we don't even have to pass upon at all.

Q. What competition did you consider in arriving at the conclusion that you submitted to the Division of Examinations?

A. It was largely the factors that you showed in your application; it was the different areas in which the banks offered services.

Q. Specifically which?

A. Well, I would say in the commercial and industrial loans, consumer loans, real estate loans, demand deposits, time deposits, public funds, and trust department operations.

Q. Was there anything in your report to the Board discussing competition from non-bank institutions?

Mr. Minicus: If Your Honor please, I must point out at this time that we assured the Court that we would be able to complete our case by Thursday. Mr. O'Malley has imposed so much of our case, that I doubt we will be able to do that.

The Court: Well, let's see how he answers this last question.

The Witness: Frankly, I can't remember, but usually we do mention the competition from other institutions; I would think that I did.

[fols. 865-866] By Mr. O'Malley:

Q. And in arriving at your conclusion—let me ask you this. Was your conclusion the same as the one adopted by the Board?

A. That's right.

Q. And that was that there would be an increase in concentration, adverse increase in concentration?

A. That's right, and that the direct competition between the two banks would be eliminated, and that there would an increase in concentration.

* * * * * * *

[fol. 867] NILE E. YEARWOOD, a witness for the Plaintiff, was called and, after being first duly sworn, was examined and testified as follows:

[fol. 868] Direct examination.

* * * * * * *

By Mr. Weinbaum:

* * * * * * *

Q. And what is your occupation?
A. I am the president of the Capital City Bank.
Q. Could you indicate your place of birth?
A. Murfreesboro, Tennessee.
[fol. 869] Q. And could you briefly outline your educational background for the Court from the time you entered college.
A. Three years of college; I studied architecture.
Q. What school did you attend?
A. The University of Illinois.
Q. Can you trace your business and professional background?
A. I spent thirty-three years as a general contractor, and for the last six years I have been a banker.
Q. Would you describe your contracting business in a little more detail, sir?
A. I did commercial buildings on a contract basis.
Q. What was the name of your company?
A. I operated as an individual.
Q. What was the name of your company?
A. Nile Yearwood.
Q. When was Capital City Bank opened for business?
A. March 22, 1960.
Q. Were you its first president?
A. Yes, sir.
Q. Did you have any prior banking experience prior to that time?
A. No, sir.
[fols. 870-872] Q. Have you felt that banking experience is essential to the running of Capital City Bank?
A. I have felt that it would have been a big help.

Q. Have you felt that it is essential?

A. No.

Q. How many offices, Mr. Yearwood, does your bank maintain?

A. The main office and three branches.

* * * * * * *

[fol. 873] Q. Mr. Yearwood, are there many available locations in Davidson County in your opinion for establishing new branches of Capital City Bank?

A. No.

Q. Can you explain why this is the case, in your opinion?

[fol. 874] A. Because some large bank has already gotten there.

Q. When you say large bank, do you have particular reference to any specific one of the large banks?

A. I mean either of the other three. There are four in town; the other three.

Q. Is it your testimony that the other three banks compete for the available branch sites?

Mr. Hooker: Objection to the form of that question, if Your Honor please.

The Court: Rephrase it. That is leading.

By Mr. Weinbaum:

Q. Can you state, Mr. Yearwood, whether or not there is competition among the three largest banks for obtaining new branch locations and putting branches on those locations?

A. They don't compete for locations. They will locate one right across the street from the other one.

Q. When you find a situation, Mr. Yearwood, where the big banks have located right across the street from each other, are you inclined, too, to establish a branch in such location?

A. Yes, that's all that's left.

Q. Are there branches of the three largest banks located [fols. 875-877] inclose proximity to your Church Street bank?

A. Yes, sir.

Q. All three banks?

A. All three.

Q. Are there branches of the three largest banks located in close proximity to your Gallatin Road branch?

A. It's further away from any other branches than any branch we have.

Q. How far away from your Gallatin Road branch would the nearest office of any of the three large banks be located?

A. Three and a half miles.

Q. Whose branch is that?

A. Third National and Commerce Union. We are halfway between two.

Q. There is one branch of each of those banks on either side of you?

A. Yes.

Q. And each is located about three and a half miles?

A. About three and a half miles from us.

Q. Which of the three larger banks have branches located in close proximity to your Charlotte Avenue branch?

A. First American is within three blocks of us; and Third National is within seven blocks of us.

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[fol. 878] Q. How large is your bank measured by deposits?

A. Our deposits today are $8,800,000-odd.

Q. And what were these deposits last year at this time?

A. About the same figure.

Q. Are you a state or national bank?

A. A state bank.

Q. Are you a member of the Federal Reserve System?

A. No.

Q. Are there certain advantages, Mr. Yearwood, in your opinion which a bank the size of yours can offer customers which a bank of larger size could not?

A. Yes.

Q. Would you please state what these advantages might be?

A. There are some people who like to deal with a small bank. We have that advantage to offer to people.

Q. Can you spell that out in any more detail?

[fols. 879-883] A. Yes. There are people who would like

to deal with the top officers in a bank. It is obvious that the top officers in a large bank can't deal with everybody. They have too many people; whereas in a smaller bank there are not so many people with whom the president of the bank and the executive vice-president have to divide their time.

Q. Are there certain services or charges for services that Capital City Bank offers which to your knowledge are offered by the other banks in town?

A. We have the smallest service charge of any of the other banks in town, according to the information that I have.

* * * * * * *

[fols. 884-885] Q. Does Capital City Bank belong to the Nashville Clearing House?

A. Yes, sir.

Q. And what does the Nashville Clearing House do for you?

A. It furnishes us a place where the four banks who are members of it go at eleven o'clock each day and exchange the checks that we have on the other bank, and we get back those that they have on us.

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[fols. 886-888] Cross-examination.

By Mr. McEnerney:

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[fols. 889-900] Q. Mr. Yearwood, in view of the increases in your bank's total revenues since the merger, and in view of your bank's increase in income both before and after the merger, would it not be a fair statement to say that this has been your bank's greatest period of growth?

A. It has been.

[fols. 901-904] Q. Mr. Yearwood, based on the foregoing analysis, would it not be fair to state that your time and savings IPC as well as your demand IPC deposits have shown a steady increase?

A. They have, yes, sir.

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[fol. 905] Q. Do you feel that adequate branching is an important element in servicing the convenience and needs of the community?

A. Yes, I do.

Q. And, conversely, would it not be true that a bank without adequate branching would not be serving the coveni-ence and needs of the community?

A. Not as fully as it could.

* * * * * * *

[fol. 906] Q. I think you testified yesterday that your principal correspondent was the Third National Bank?

[fol. 907] A. Yes.

Q. Can you tell us, is it your experience that the larger correspondent banks tend to take accounts away from the smaller?

A. No, they do not.

Q. What would you do if you found that Third National was trying to take away some of your accounts?

A. I would take some of my account from them.

Q. Has any other bank in Nashville recently been seeking your correspondent business?

A. Yes.

Q. Can you tell us what bank that is?

A. The First American.

Q. Have you had any discussions at all with people at First American with this in mind, with respect to this possibility?

A. Yes, I have had numerous visits from them.

Q. And this was with respect to relating to switching your account from Third to First American?

A. Yes.

Q. With whom have you had these discussions?

A. Mr. John Baxter; Mr. Pete Curley; Mr. Andrew Benedict.

Q. How many times have you discussed this possibility with these gentlemen?

[fols. 908-909] A. In the past two years I would guess fifteen times.

Q. What was the substance of these conversations?

A. The substance was that they could do more for us than anybody else.

Q. Did these persons discus whether they would compete with you or your accounts if you became their correspondent?

A. No, we didn't discuss that.

* * * * * * *

[fols. 910-914] Q. Would you tell us what, if any, problems you have had in finding competent bank management?

A. I found it very difficult to find people who are competent to do the work—not only at the management level, all the way down to the porter.

* * * * * * *

[fol. 915] Q. With regard to automobile loans, could you tell us who you consider to be your competitors?

* * * * * * *

A. Today our competitors are substantially the same people that they have been ever since we have been in business, and all of the other banks are our competitors, all of the finance companies that finance automobiles, such as CIT, Ford Credit, GMAC, Associates Finance, Dial Finance Company, Hermitage Finance, hundreds of finance companies. Even savings and loan associations can compete with us on automobile loans when they have an open end mortgage and advertising that you can borrow more money on your mortgage and use the money for buying yourself a new automobile.

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[fol. 916] By McEnerney:

Q. Let me ask you this, Mr. Yearwood, do you think that Mr. Kirby Primm and Mr. Hackworth had fine reputations as aggressive bankers while they were with Nashville Bank and Trust?

A. Yes, I think they were two outstanding gentlemen in Nashville.

Q. What, in your opinion, would have happened to Nashville Bank and Trust when you took away Mr. Primm and Mr. Hackworth?

A. I don't know.

Q. Don't you have an opinion about that?

A. No, I don't have an opinion about that, because there are so many things that could have happened. They could have just done a lot of things. They could have hired me to come over and run that bank.

Q. Were any efforts made in that regard?

A. No, no, no.

Q. Do you have an opinion as to whether there were any [fols. 917-923] adequate replacements for these two gentlemen within the staff of Nashville Bank and Trust?

A. I never did hear of any.

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[fol. 924] Redirect examination.

By Mr. Weinbaum:

Q. Mr. Yearwood, with three larger banks in the community now instead of four, would you state whether or not your job is any steeper than it was?

A. Competition between the two larger banks has gotten much more intensive in my opinion since then.

Q. Has your job become any steeper with three large banks instead of four?

A. In running our bank, I try to pay very little attention to them. We are running our own shop rather than looking out the window to see what they are doing. So it wouldn't be fair to say that my job had become steeper or flatter.

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Recross-examination.

By Mr. McEnerney:

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[fol. 925] Q. Has competition from Third National Bank gotten any worse since the merger, competition from Third National?

A. The Third National Bank—we don't consider Third National Bank to be a direct competitor of ours. The competition between the Third National Bank and the First American National Bank has gotten a lot keener.

Redirect examination. (Further)

By Mr. Weinbaum:

Q. Just a few additional questions, Mr. Yearwood. Can you explain why in your opinion you believe the competition between Third and First has become keener?

A. There has always been a great desire on the part of the Third National Bank to be as large a bank as the First American. They never told me that, but that is very much in evidence. They have come up to the size in deposits of [fols. 926-966] First American—one time at least; and they have been apparently very anxious to maintain that position.

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Dr. Ronald H. Wolf, a witness called by and on behalf of the Plaintiff, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Minicus:

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[fol. 967] Q. There is in evidence Government Exhibit No. 539, which is the response to certain interrogatories filed upon the defendants by the Government. This document shows that both Third National Bank and Nashville Bank and Trust Company offered regular checking accounts, but that the fees and charges applicable to Nashville Bank and Trust Company's regular checking accounts were less than those charged for Third National Bank's checking accounts. What is the importance of this pricing differential from the standpoint of competition?

A. Mr. Minicus, this is an illustration drawn from the local scene of exactly what I have been talking about. In other words, here is a practical demonstration of a medium-sized bank that apparently is strong enough not to fear retaliation from its larger rivals that tries to, say, establish a place for itself in the community by offering somewhat lower services charges in regard to checking accounts.

It seems to me that this is just what you would expect a smaller factor in the market to do. In other words, the three larger banks in Davidson County are engaging in branch office competition.

The evidence is pretty clear, I think, that branch office competition tends to be cost-raising. It is something that the larger firms could engage in. It is a type of competition that they themselves would prefer to force upon the market. [fol. 968] But, if some other firm—a smaller firm—chooses to forego the expense involved in numerous branches, it may very well have lower costs in regard to this particular operation which it can then in turn pass on to the public by offering just such examples as this—lower checking service charges, you see.

In that case there has been made available to the community for those who would pass up the additional service

the possibility of some inconvenience of location, but a lower charge for checking services.

In that case—and that might especially be important to low-income groups and marginal persons—but the advantage of the lower rate is deemed to be more highly attractive than the advantage of branch office convenience.

Q. You have mentioned several times during the course of your testimony the difference in the way that Nashville Bank and Trust Company handled its automatic financing. Does that fit in with the type of economic analysis you are making at the moment?

A. Yes, I think this is just another example of how a medium-sized bank will choose to inject the competition that it brings to the market place in a somewhat different fashion than its larger rivals are bringing to the market place.

[fol. 969] Q. What possible economic is it to be affected by handling automobile financing on direct loans rather than indirect loans?

A. As I understand it, the Nashville Bank and Trust Company did engage in this direct loan type of automobile financing. It rather emphasized this type of automobile financing when other firms were emphasizing other types of financing, mainly through dealers, which in part was tied in with possible arrangements for dealers with floor-plan financing.

Now, a bank that isn't too closely related to, say, wholesaling credit to dealers, is perhaps in a better position to act independently in regard to their actions in the retail credit field.

And it seems to me that this is exactly the type of thing that Nashville Bank and Trust did, and the saving of course is this. You may eliminate a middleman. In other words, where the automobile financing is done direct, it isn't necessary to make the kickback or the commission to the automobile dealer for the services which he rendered in furnishing or referring the business, you see, to the bank.

I think there is one exhibit here, Mr. Minicus, that maybe I would like to refer to, if I may.

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[fols. 970-971] A. Government Exhibit 544. In a community where banks typically solicited automobile financing through dealers, I think, the Nashville Bank and Trust injected this emphasis upon direct financing.

In fact, Government Exhibit 544—I wanted to refer to that in my notes so I would no make any mistake in the numbering of it—in that exhibit you will see that the Third National Bank advertises that the prospective automobile buyer should ask his dealer to ask for us. This is an indirect approach.

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[fol. 972] By Mr. Minicus:

Q. You were speaking about the rates and any differential that may occur in rates in the two different types of financing.

A. Yes. I would like to call attention of the Court again to an exhibit—I have the number here—Government Exhibit 545. According to this exhibit, the Nashville Bank and Trust Company was advertising a five percent plan for new cars and a six percent plan for used cars.

I was rather surprised when I read that. My economic experience has been that usually we have what is called a six percent plan. Here was a firm in Nashville, a bank—the Nashville Bank and Trust Company—which was advertising under a five percent plan. Here again, I think, the Nashville Bank and Trust Company was injecting into the Davidson County market a form of competition in regard to automobile financing that was entirely wholesome from the standpoint of society and the economics of competition.

[fol. 973] Q. What benefits inured to the people of the community by the fact that these interest rates were advertised in their local newspapers?

A. Here again I would like to refer to some specific government exhibits. The thing that strikes me about the Nashville Bank and Trust Company in its advertising is this: It wasn't to quote prices, rates, fees, in regard to its automobile financing.

The consumer could easily simply read in the ad what Nashville Bank and Trust has to offer in the way of automobile financing. Those exhibits, by the way, are Govern-

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ment Exhibits 545, 547, and 548. In all of these, the rates are shown.

In contrast to that, there are Government Exhibits 544 and 546. These are Third National Bank ads. They do not include any price information. There is an invitation.

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[fols. 974-975] A. So, from the standpoint of effective competition, it seems to me that the Nashville Bank and Trust Company was very effectively doing what we hope competitors will do, and that is provide information so that customers and other rival sellers will have information as to what is available in the market.

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[fol. 976] Q. The response to the Interrogatory which I mentioned to you shows that there were substantially more than one thousand of these common customers in the two institutions that are now merged.

Have you any conclusions on what these customers may have lost by virtue of the merger?

A. Well, of course, from the economic point of view, as an automatic result of the merger these people who are looking upon these two banks as alternative sources of credit now have lost one. There option, if they want multiple sources of credit, is now, of course, to attempt to do busi-[fol. 977] ness with some of the other banks in Davidson County.

However, these other banks in Davidson County were already here. Those customers who wanted to do business with them could already have been doing business with them.

So, if now some of these take up with some of those people preferred to do business with the Third National Bank and the Nashville Bank and Trust Company, and that others, from an economic point of view, this is a second choice. In other words, it may very well have been that some was their preferred sources of credit or deposit service; and now if they want multiple sources, they are forced to go to their second sources.

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A. Well, it seems to me, Mr. Minicus, that these alternatives were already here; and if people had preferred to do business with those institutions, they would have done so. They must have preferred to do business with the Nashville Bank and Trust, since the Nashville Bank and Trust was a forty-five or fifty million dollar institution. It was [fol. 978] offering something that, say, the institutions that have three or four or seven million dollars in assets or deposits would not be in a position to offer.

These could very will be not as desirable alternatives for those people who had preferred to do business with the Nashville Bank and Trust Company.

Q. Dr. Wolf, if you consider the Nashville Bank and Trust Company was wholly eliminated as an independent operative factor on the relevant market, and that throughout the period 1955 into 1964 it had expanded at a rate of growth greater than any other bank in Davidson County and was still expanding at the time of its acquisition; and, further, that extensive growth was indicated for Davidson County in which Nashville Bank and Trust Company may well probably have shared; and that Nashville Bank and Trust Company held a share of the relevant market at least equal to five percent of that market; and that Nashville Bank and Trust Company was acquired by one of the three large commercial banks in Davidson County; and that Nashville Bank and Trust Company competed in practically all of the services except some highly specialized ones which were offered by the acquiring bank; and that Nashville Bank and Trust Company was an active competitive influence in the relevant market; and thatthe trust department at Nashville Bank and Trust Company ranked among Nashville's leaders in the field; and that Nashville Bank and Trust Company engaged in certain competitive prac- [fol. 979] tices not pursued by an other of the three large banks in the relevant market, what conclusions do you derive——

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[fol. 980] Q. What conclusions do you derive with respect to the effect of the merger concerning the elimination of

Nashville Bank and Trust Company from the relevant market.

Mr. Farris: Now, if the Court please, I object to the last part of the question, particularly that Nashville Bank and Trust Company engaged in certain competitive practices not engaged in by other banks, because I think there is no foundation for that statement in the record at this time, nor will there be.

Mr. Minicus: May I respond to that, Your Honor.

The Court: Yes.

Mr. Minicus: I think the witness has already recited the fact that, from the record, as it is in evidence now, that one of the competitive practices, at least, that Nashville Bank and Trust Company engaged in, that none of the three did, is a regular open advertising of interest on automobile rates.

A second competitive practice that Nashville Bank and Trust Company engaged in was lower charges on demand deposits than any of the other three banks in the city, or certainly lower than Third National Bank, anyway. The record is clear on that.

So we have at least two practices that are already in [fol. 981] evidence in which Nashville Bank and Trust Company was quite distinctive.

The Court: Well, with those two—it should be confined, it seems to me, probably on the basis of the record as it's been developed so far, to those two practices that you have just mentioned, the interest rates and the automobile financing, and also on the service charge on the checks.

Mr. Minicus: I say at least two; there may be more as we go along.

The Court: Yes.

By Mr. Minicus:

Q. At least two practices which were not pursued by the others, what conclusions do you derive with respect to the effect of the merger concerning the elimination of Nashville Bank and Trust Company from the relevant market?

Mr. O'Malley: If Your Honor please, I believe it may show that Nashville Bank and Trust Company, the record

may show that the Nashville Bank and Trust Company had lower charges than Third National in some cases; I don't think it says anything about the other two banks in the city.

The Court: No, I think it was Third National, probably.

Mr. Farris: It doesn't show that its charges were lower [fol. 982] than Capital City Bank.

Mr. Minicus: I specifically said—I'll change the question again.

The Court: Just that last part of it; don't repeat the whole question.

Mr. Minicus: Yes, I'll qualify the last part of the question by saying that the charges were lower than those of Third National Bank.

The Court: Yes. All right, go ahead.

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Q. Considering those factors, I ask you what conclusions do you derive with respect to the effects of the merger concerning the elimination of Nashville Bank and Trust Company from the relevant market?

[fol. 983] A. Well, in view of these facts which you have presented, my conclusion is simply this, that there has been removed by the merger from the relevant market a major competitive influence in that market, and also a significant competitor.

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A. No, I do not think that this acquisition by the Third National Bank of the Nashville Bank and Trust Company was necessary in order to make the Third National Bank a viable economic unit.

The Third National Bank has a record of growth; it has grown to be one of the three largest banks in Davidson County. It was large enough in market share, market position, so that it could compete oligopolistically with the First American National Bank and the Commerce Union Bank.

Thus, I do not think that it was necessary in order to make the Third National Bank a viable factor. It was already in a position to compete with its larger rivals.

Moreover, there is this aspect that the merger removes

from the market what was a significant and major influence in the local scene. In view of these things, from an economic standpoint——

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[fol. 984] The Witness: It seems to me that there was no economic necessity for this merger. I don't think that the people of the United States are asking too much when they ask that the Third National Bank continue to carry on its activities by internal growth. In other words, there isn't any economic necessity that requires the Third National Bank to, at this late date, improve or increase its already adequate market position by resorting to external forms of growth.

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[fol. 985] By Mr. Minicus:

Q. The Government's evidence clearly shows that the three largest banks in Davidson County in practically any banking—according to any banking standard you may choose, controlled between ninety-seven and ninety-eight per cent of the banking resources, services, and that the remaining four banks now in the county control between two and three per cent.

Why is this type of structure inimical to the free play of competition?

A. Well, I think there are several reasons why a highly concentrated structure is inimical to the free play of competition.

One that I would like to mention is the one in regard to the oligopolistic behavior that takes place when you have a large—a group of large firms, a small group of large firms, that engage in certain forms of competition, but prefer not to engage in certain other types of competition.

Now here it seems to me that it's highly important that we have these medium-sized institutions and smaller institutions to provide the services which the larger institutions are not providing.

[fol. 986] I'm thinking in this case of the possible marginal borrower. It may very well be that the larger institutions would not want to take this type of business. In fact would

not have to, because they have additional sources of customer patronage for their operations.

Now in this case, it may very well be that the marginal operator will go unserved unless there is somebody in the market place who is willing to take him on.

I think there's a government exhibit, if I may refer to it, which I would like to call attention to the Court at this point, and that is government Exhibit No. 579. In that exhibit, which is, I believe, a letter from Mr. Overton Thompson, Jr., to Mr. Hackworth—

Q. At which page of the exhibit, please?

A. This is Government Exhibit 579.

In this letter, Mr. Thompson stated that the Nashville Bank and Trust Company, at times, extended credit to people that in his judgment credit should not have been extended to, because it was unsound from a banking point of view.

On the other hand, from an economic point of view, it seems to me to be highly important that there is in Nashville or was a commercial bank that is willing to take on these riskier borrowers, small businessmen who may be anxious to get started, but whose credit is more doubtful, [fol. 987] and in that case, it seems to me, without this, that there is a great lack.

Therefore, rather than decrying that, I would say from an economic point of view, the Nashville Bank and Trust Company may have been contributing something to the community.

A second, I think, inimical feature in regard to high levels of concentration in banking has to do with this point. If banking is highly concentrated, that may spill over into other segments of the economy. In banking markets, you will sometimes find firms aligned with banks, and unless there are other banks available, someone who wishes to break into some manufacturing industry or some wholesaling industry or some retailing industry, may pretty well find the doors closed to him because the existing banks are already servicing that industry.

Now the present industry and the present banks may very well think in their good judgment that there isn't any more competition needed in this market in regard to this area of manufacturing, wholesaling or retailing. Thus

they shy away from extending credit. Thus it is important that when such a person is turned down by such a bank that is already doing business with such another type of business, that there are others who will extend the credit and make the loan and very well increase the competition in some other line.

[fol. 988] A third factor that I think would be important to mention here is simply this. In manufacturing, where sellers are few or where you have a monopoly, we know of a remedy called the compulsory selling decree. Now this compels the seller to sell to prospective customers if they have the cash to pay, and so on and so forth.

Now in banking, by the very nature of banking, a banker has to be in a position to refuse to deal. You can never subject banking to compulsory assignments to make loans. The banker wants to keep for himself the right to judge this. Every borrower is a different situation, and therefore, bankers rightly argue that they must be in a position to refuse to deal when in their judgment they feel that credit should not be extended.

Now in that case, it becomes all the more important that there be alternative sources of credit where those who are rejected may go and find an acceptance.

Now a fourth factor that I think is also a factor that indicates a danger to the free play of competition when you have banking concentration, and that is simply this, that the small local businessman, who is not known outside of his community, relies mainly on the local sources of credit for his services, for his loan.

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[fol. 989] Finally, concentration is inimical to the free play of competition, I think, because in banking there is the possibility of discrimination. Let me explain this. In economics, where we have an organized market exchange and buyers and sellers are meeting together at one place, a commodity exchange, it is said that the phenomenon of price discrimination just doesn't take place.

[fol. 990] Now, in other product markets, manufactured goods, we don't have organized method exchanges; but we have a law—the Robinson-Patman Act—which attempts to enforce in that type of situation a prohibition on price

discrimination where that price discrimination damages competition.

So there s a safety valve there, the Robinson-Patman Act protection. In banking, since banking is a service, the Robinson-Patman Act doesn't apply to banking. Since there is no safeguard in the law, the only safeguard in banking is the possibility that you have fairly effective competition. And it only through competition that the community can be protected against price discrimination in the area of commercial banking.

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[fol. 991] Q. In what sense was the Nashville Bank and Trust Company a potential competitor within Davidson County?

A. Well, I think the record shows that the Third National Bank and the Nashville Bank and Trust Company offered many of the same services. I think the record also shows that the Nashville Bank and Trust Company did not offer all of the services that the Third National Bank offered.

Now, with the passage of time it is possible that the Third National Bank—pardon me; let's correct that. That the Nashville Bank and Trust Company—would add additional services.

The Nashville Bank and Trust Company had a good record of growth over a ten-year period. Supposedly if its growth continues, it could add additional services; and in that case the potential services have become actualized. In more recent years the growth rate of the Nashville Bank and Trust has been slowed somewhat.

As an economist, I don't think this is too significant. [fol. 992] Business firms have their ups and downs. There are cycles that we go through. You can have a slowdown in growth without necessarily indicating that this is the ultimate and final collapse of an institution. And if you examine any one of a number of business firms, you will find these cycles, more rapid growth, slower growth. In fact, I think in the Nashville Bank and Trust case, when Mr. Hill entered the company, there was a rejuvenation, a revival, more rapid growth. And then it seemed to become quiescent again.

Then when Mr. Hackworth entered, seemingly things livened up again. This type of thing—these cycles—are part of the business world.

Furthermore, let us suppose, let us just assume, that the Nashville Bank and Trust Company wasn't able to grow as rapidly as some other banks.

In a situation like that, it might very well be forced to take more competitive action for the sake of survival. There is a big difference between growth and survival. We like to grow, but in some situations it may be the best you can do is to stand still.

In a situation like that, success from an economic point of view may be in the picture. Therefore, it seems to me that even if a firm would not grow too much in the future from the standpoint of survival, it may simply then force it to do what it can to safeguard its position, and this might very [fol. 993] well direct it into paths of more competitive behavior in regard to price, service charges, financing, and the treatment of marginal borrowers.

Q. How does the merger of two rivals such as you have just described within the same relevant market affect potential competition?

A. Well, if you have two rivals in the same market and they merge, this type of potential competition that I am talking about is automatically eliminated. The two have become one.

There is one decision-making unit now. They are not two independent organizations. So I will say it is a matter of automatically being eliminated. There is no possibility of it.

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[fol. 994] A. This means that, in order to enter the banking business, you have to ask someone. You have to ask the state banking commissioner or you have to ask the Comptroller of the Currency whether you can come in or not.

Now, in deciding whether you may come in or not, these two banking agencies—the state and the federal government—examine a number of different things, including an examination of the market, to see whether in their judg- [fol. 995] ment the situation is already adequately banked, and thus no additional bank is needed; or whether the situ-

ation is not adequately banked and thus there is room for another bank to come in.

So, in this case entry is not free. You have to ask someone. And sometimes people are turned down, and sometimes they are turned down because the banking authorities think that the situation is already competitive enough, adequately banked.

This is their judgment. It is the judgment of a banking authority. It is not the judgment of the market place. It is not the judgment of an indifferent or impartial court. It is the judgment of a banking agency.

In circumstances like that where entry is not free but it is by permission, it seems to me most important that we safeguard our existing structure of banks because the loss of one will not necessarily lead easily to a replacement of that one.

Q. Thank you, Dr. Wolfe. Considering that the acquiring bank, Third National Bank in this case, by reason of the acquisition of Nashville Bank and Trust Company, increased its share of the market from about thirty-three percent to about thirty-eight percent, and that there were remaining seven commercial banks in the relevant market, the four smallest of which held less than three percent of that market, and the three largest banks in the market held [fol. 996] in excess of ninety-seven percent of the relevant market, and that prior to the merger the three largest banks already held appriximately ninety-three percent of that market, what are your conclusions with regard to the effects of the merger on future competition within the relevant market?

A. In view of the facts which you set forth, Mr. Minicus, in regard to, say, this level of concentration, an oligopoly core accounting for ninety-three or ninety-seven percent of the market, any economist, I think, would say that evidences a high degree of concentration.

Furthermore, you mentioned the Third National Bank. The Third National Bank's share of the market before the merger is already thirty-three or thirty-four percent, I believe.

As I read the Philadelphia case, this possibly is already an adequate or even undue market position.

In view of this concentration, then to acquire another

bank of four or five percent and add that to this share only makes a highly concentrated banking structure more concentrated.

My conclusion would simply be this: That the probable effect of that merger will be to substantially lessen competition in the Davidson County market.

* * * * * * *

[fols. 997-1006] Cross-examination.

By Mr. O'Malley:

* * * * * * *

[fol. 1007] The Witness: I'm saying that our interest, say, in regulating banks is to see to it that competition is not too keen, too excessive, that's part of it. Now there's another part to it.

Banks are subjected to—well, most of our states have usury laws. Now these may or may not apply too much to banks, but there are usury laws. Here is somehow an indication that society doesn't think that people ought to [fols. 1008-1017] be paying rates of interest above a certain rate.

* * * * * * *

[fols. 1018-1031] By Mr. O'Malley:

Q. Whether it has an obligation to utilize the funds deposited in it by individuals and governments to promote the growth of the economy of its community by lending; whether it has that obligation to the public and to its community, not to its depositors and not for a profit motive, but whether there is anything here besides a profit motive.

A. I wouldn't think that a bank has my obligation to promote the economic development of a community. It's in busines to make money, and the economic development of the community may be a byproduct or a side product of that.

* * * * * * *

[fol. 1032] Q. Now you indicated that in the uncontrolled segment of the economy, there is——

A. Free enterprise, free competition.

Q. Free enterprise takes care of everything. In the totally controlled sector of the economy, you have natural monopolies. Yet in this semi-controlled sector such as banking, you listed in effect at least four of the same qualities that are present in a monopolistic situation.

First, lack of freedom of entry, which you admit is strictly controlled, is that correct?

A. Yes, entry is controlled.

Q. Rates. Now let me ask you just a couple of questions about rates. Do you know what the usury statute of the State of Tennessee is, what the limit is?

A. No, I'm sorry, I don't know the exact per cent.

Q. I believe the Court can take judicial notice of this, six per cent.

A. Six per cent.

Q. Do you know what the maximum rate any bank in the State of Tennessee, whether a member of the Federal Reserve or not, can pay?

[fols. 1033-1052] A. The maximum rate of interest on depositors?

Q. On deposits.

A. I believe that is four per cent.

Q. Regardless of whether it is a national bank?

A. I believe that's the law in regard to—the federal law, and also I believe that's the state law.

Q. And do you know what the maximum rate a bank can pay on CD's in Tennessee?

A. No, I don't.

Q. That is also four per cent, doctor, by Tennessee law. You didn't know that?

A. No.

Q. Now you have the rates controlled, and there's a two per cent spread basically between one and the other, and do you know what the Federal Reserve System rediscount rate is at the present time?

A. I believe that's four and a half per cent.

* * * * * * *

[fols. 1053-1055] The Court: That's about the same thing. Do you know yourself specifically or personally whether or not bank examiners, when they come into a bank to make an examination, do actually examine individual loans that the bank has made?

The Witness: My knowledge is not that intimate as to whether he examines each loan.

* * * * * * *

[fol. 1056] Q. So that every time credit is extended by a bank loan, the person borrowing or to whom the credit is extended has the option, does he not, of taking the cash or having the money added to his account upon which he can immediately write a check and get the cash?

A. I would think that would be putting it correctly. He may draw out the cash or he may write the check and then cash the check. Or you may never even bother about cashing it. You may simply write out a check and pay some bill. In that case somebody else has it. In that case, there simply will be a use of checks and there may never have been any cash like in the bank. But the checks are cleared.

Q. But the option is always there to get the cash, isn't it, Doctor?

A. The option is there on a demand deposit. If you have a demand deposit, you can get the cash.

Q. On an extension of credit.

A. On an extension of credit? You can ask for cash [fols. 1057-1092] money if you wish cash money.

* * * * * * *

[fol. 1093] The Witness: Really, Mr. O'Malley, to answer that you would have to know something about the whole market area in which these correspondent banks operate.

By Mr. O'Malley:

Q. Do you know anything about that market area?

A. No, I couldn't say how far out the Nashville Bank and Trust Company or the Third National Bank, to what extent, how much of the United States.

Q. Did you attempt to find out?

A. They covered in connection with that?

Q. Did you attempt to find out?

A. No, I didn't because I didn't think that was relevant to the question of competition in the relevant market, you see.

*   *   *   *   *   *   *

[fol. 1094] By Mr. O'Malley:

Q. Now you did not consider the correspondent system [fol. 1095] of either bank in assessing competition, is that your testimony?

A. That's right.

Q. In other words, you decided that the relevant geographic market was before you knew anything about where these people had accounts or where they got them from?

A. No, I decided the relevant market on the basis of examining the total economic evidence in regard to where those who wished to be customers of the banks look for their services and on the basis of the practicalities of the matter, where customers customarily find their services. There is where I made my finding in regard to what I thought in my own mind was the relevant geographic market from the standpoint of the economics.

Q. I see.

A. Of the situation.

Q. Without considering the existence of any competition outside of Davidson County?

A. My view is that competition outside of Davidson County is not significant from the standpoint of establishing competition or the lack of competition in Davidson County.

Q. Are four per cent of a bank's deposits significant?

A. Four per cent of the bank's deposits significant?

Q. To that bank?

[fols. 1096-1099] A. Conceivably.

Q. Well, what is your opinion as an economist?

A. Not de minimis.

Q. It is significant?

A. It would be substantial.

Q. Would it be substantial?

A. I would say it is not de minimis.

Q. Is it substantial?

A. Substantial?

Q. Yes.

A. Substantial in the sense that it is not de minimis.

Q. You mean it's barely above de minimis? You are using a relevant term, doctor. Is there any absolute that you can use?

A. Well, more than a trifle. More than a trifle, substantial.

Q. Are you saying now it's more than a trifle and it is substantial?

A. Well, more than a trifle to me in an economic sense means that it is substantial.

* * * * * * *

[fol. 1100] Q. Now, do you—have you made any studies as to the actual cost of handling a checking balance, or a checking account?

A. The actual cost?

Q. Yes, sir, to a bank.

A. Of handling a checking account?

Q. Yes, sir.

A. No. I have simply deduced from logic that a bank which receives cash deposits and in return does not pay an interest payment on those deposits is in a more favorable cost position than those who have to pay a rate of interest on the funds which they received.

Q. Do you consider the percentage of a bank's overhead in terms of the solicitation of new demand deposits?

A. What is your question again?

Q. Did you consider the percentage of a bank's overhead which is attributable to the solicitation of new demand deposits?

A. You mean what share of a bank's total revenue goes out in the form of solicitation of new demand deposits?

Q. Yes, sir.

A. No, I don't know what share of their expenditures.

Q. Or what share of their advertising is attributable to the cost—to the solicitation of demand deposits?

[fol. 1101] A. To what share of their advertising is attributable to demand deposits?

Q. Yes, sir.

A. No, I couldn't answer that.

* * * * * * *

Q. Did you consider the cost of services rendered to correspondents?

[fols. 1102-1104] A. The cost of services rendered to correspondents?

Q. Yes.

A. I would certainly think that was a cost of production that the bank would have to include as part of its total cost of operation, and it would certainly hope that the revenues which it receives would be sufficient to cover that along with other costs and leave a profit.

Q. Are correspondent balances all demand deposits?

A. Are correspondent balances all demand deposits?

Q. Yes.

A. I'm not sure. I wouldn't think necessarily so, but I couldn't answer that specifically. I'm not that familiar with correspondent banks.

[fols. 1105-1117] Q. Would you agree with this statement, doctor? It a bank provides services to demand deposits that it provides to no other form of deposit, that those services are chargeable to demand deposits and represent a cost of demand deposits?

A. Services that are directly and only related?

Q. Yes.

A. To the demand deposits?

Q. Yes, sir.

A. Would be, from an economic point of view, costs of rendering that service.

Q. That's right.

A. And should be considered from an economic point of view.

Q. Yes.

A. If you can truly find those that are directly allocable to that, it would seem to me that those are part of the cost of performing the service.

* * * * * * *

[fols. 1118-1129] A. Not in the terms that you put it. Now, as I indicated, I think we would want to know a good deal more about it. There might be some consumer finance agencies that rely much more heavily upon commercial banks who say that the total number——

Q. But you don't know them, do you?

A. No.

* * * * * * *

[fols. 1130-1148] Q. Do you know of any bank that didn't lend money in Nashville, that did not lead money to lending institutions?

A. Any bank in Nashville that did not extend—

Q. Credit to financial institutions?

A. —credit to financial institutions?

Q. Yes.

A. I'm under the impression that the Nashville Bank and Trust——

Q. Do you know, doctor? I'm asking you for sworn testimony as to whether you know whether any other bank in Nashville—

A. Any other bank?

Q. —did not—at the time of the merger or before, did not, do you know whether any of them did not lend money to other financial institutions?

A. Did not lend money to any other financial institutions?

Q. Yes.

A. Any financial institutions?

Q. That's right, sir.

A. No, I'm aware of that.

* * * * * * *

[fol. 1149] Dr. Ronald H. Wolf, (Resumed) a witness called to testify by and on behalf of the plaintiff, having been previously sworn, resumed the stand, was examined, and testified further as follows:

Cross-examination. (Continued)

By Mr. O'Malley:

Q. Dr. Wolf, at page 963 of your testimony on Thursday, you indicated that a small firm can shade a price or shade a rate and perhaps attract to itself some customers, especially lower income groups and those who are economy minded, who would prefer to have less service, less convenience,

and possibly a lower service charge, lower fee, and we discussed yesterday the question of checking accounts which was one of the items that you allege or claim Nashville Bank and Trust Company had lower charges on than Third National Bank.

I ask you this question, doctor, do you have personal [fols. 1150-1151] knowledge that any person or firm—pardon me—any person chose Nashville Bank and Trust Company as a bank because of its lower service charges on personal checking accounts?

A. Personal knowledge of any——

Q. Any person.

A. —person in Davidson County who selected this bank—

Q. Any person.

A. —because of that reason?

Q. Yes.

A. No, I have no personal knowledge of any individual.

Q. Now do you know of any person who left one of the three larger banks to take advantage of this lower rate at Nashville Bank and Trust Company?

A. No, I know of no person.

Q. Very well.

* * * * * * *

[fol. 1152] Q. Do you know from your own personal knowledge of any innovation that was introduced originally by Nashville Bank and Trust Company in the ten years prior to its merger?

The Court: I'll let him answer that.

The Witness: Well, in regard to this automobile financing, it appears to me that from what I understand of the situa- [fols. 1153-1155] tion, that they emphasized this particular aspect.

By Mr. O'Malley:

Q. Did they introduce this within ten years prior to the merger? Do you know?

A. Well, I wouldn't want to testify——

Q. Do you know?

A. To testify that they were definitely the one who introduced it, but they were the ones who used it.

Q. Is your answer no, doctor?

A. You mean whether anyone else had done it before?

Q. Whether you know—the question, doctor, is whether or not you know to your knowledge that they introduced any innovation in the ten years prior to the merger. Is your answer no to that?

A. I would have to say that I don't know.

* * * * * * *

[fols. 1156-1162] (Reporter read the following question:

"Q. Do you know of any—my question is whether you know of any bank that took any action regarding its price structure as a result of the competitive influence of Nashville Bank and Trust Company? Do you know or not?")

A. No, I do not know of any individual bank that took any action.

* * * * * * *

[fol. 1163] The Witness: Yes. Let me clarify that. I would like to call attention to Government Exhibit 1012. That exhibit shows net income after taxes to capital accounts.

This is a very frequent—in fact, the most frequently used —measuring rod by economists to see how well firms are doing. Even after extending business to some of these marginal borrowers, some of these more riskier borrowers that apparently the other large banks, at least, were not interested in taking, we find that in this exhibit for the year 1962 that the Nashville Bank and Trust Company earned a rate of return after taxes on its capital accounts of 9.4 percent, which is a little higher than Commerce Union's rate of return to capital accounts.

It is also higher than the rate of return earned by all member banks in the Sixth Federal Reserve District. It is also higher than the rate of return earned by all FDIC insured banks in the United States with $100 million to $500 million deposits—much larger banks. And it is substantially higher than the rate of return earned by FDIC insured banks in the United States of $25 million to $50 mil- [fol. 1164] lion deposits, within which this bank would fall.

The average of all those banks is 7.9 percent to capital accounts. Nashville Bank and Trust earned 9.4 percent. Apparently from an economic point of view this extending of credit to people who would be rejected by the Third National Bank and others has not so jeopardized the Nashville Bank and Trust so that it was unable to earn a very favorable rate of return for its stockholders.

* * * * * * *

Q. Doctor, I would like you to answer my question Yes or No: Whether it is your position, then, that a bank which [fol. 1165] makes unsound loans from a banking point of view is contributing economically to the community.

Mr. Minicus: There is no showing that any loans were unsound, Your Honor. The letter says it may be inadvisable.

Mr. O'Malley: May I ask the Court to direct this witness to answer this question Yes or No. I think it calls for that type of answer.

The Court: Stick to the language of this letter. Mr. Thompson stated that Nashville Bank and Trust Company at times extended credit to people that in his judgment credit should not have been extended to because it was unsound from a banking point of view.

There is no showing of the number involved. He says, at times.

Mr. O'Malley: This is directed to his theory of economics here and his theoretical position on this, Your Honor.

The Court: Go ahead.

A. It is my theoretical position that a bank, say, of the size of Nashville Bank and Trust, would not be able to compete in the area of branch offices as well as any one of the big three. Now, since branch office competition, studies show, tends to be cost-raising, a bank could very well escape this cost by not engaging in it; and therefore, even if neces- [fol. 1166] sary, incur slightly higher bad debts; and we have no indication here that they actually incurred higher bad debts.

That would be an offsetting cost, but it would still be the same possible net return, you see. If one bank uses one method—branch-office competition—and this gives them a

cost of doing business, and a unit bank chooses not to do that, they may save that expense.

Now, to offset that advantage of competition, they may very well extend credit to some marginal borrowers that otherwise would not be serviced.

These are your riskier people. Some of these loans will turn out to be all right. Maybe some of them will not. Your allowance for bad debts will take care of that.

After the allowance for bad debts, there is still a very completely respectable rate of return on stockholders' equity of the Nashville Bank and Trust Company.

[fols. 1167-1168] Q. Is your answer then yes?

A. In regard to the economics of it?

Q. To the question I asked?

A. From the economic point of view, I would have to say yes.

* * * * * * *

[fol. 1169] Q. I said prior to the merger, do you know of any such firm, or any firm, which after having been denied credit at any of the larger banks in Nashville was able to enter competition with established firms as a result of credit extended to it by Nashville Bank and Trust Company?

A. No, I know of no firm in Nashville.

* * * * * * *

[fol. 1170] The Witness: Do I know of any person or firm——

By Mr. O'Malley:

Q. Person or firm.

A. —who was rejected?

Q. Who, after having been denied credit by any of the larger banks in Nashville, any of the three larger banks in Nashville, was able to secure it at Nashville Bank and Trust Company.

A. I can mention no names.

* * * * * * *

[fol. 1171] Q. Professor Wolf, on page 990 of your testimony on Thursday, you discussed the need for competition in banking to prevent price discrimination?

A. Yes.

Q. And your basis for saying that was that the Robinson-Patman Act does not apply to banking since banking is a service. Is that your testimony?

A. I think that is.

Q. Are you sure of that, doctor?

A. The Robinson-Patman Act does not apply to banking?

Q. Yes.

A. The Robinson-Patman Act speaks of commodities, of like grade and quality. Now from my understanding of the Robinson-Patman Act, this has been interpreted as applying to commodities, and that services have not been brought in under this word "commodity" as it is used in the Robinson-Patman Act.

Q. And therefore, your conclusion is that competition in banking is necessary absent a law?

A. Yes, I—

Q. To prevent price discrimination, is that your testimony?

A. Yes, I know of no situation where price discrimination [fol. 1172] has been able to prevent attack under the Robinson-Patman Act. Therefore my argument is that there isn't the legal protection; you see, in manufactured goods where you have commodities involved, there the Robinson-Patman-Act strikes down, prohibits those forms of discrimination, price discrimination that damage competition, but unless the Courts are willing to accept a much broader definition of commodities, services have not been included within that, at least up to the present, and therefore, since you do not have legal protection involving price discrimination, it seems to me that our only protection is the fact that if somebody is discriminating, somebody else may not be discriminating, and there is the importance of having rivals in the market place.

Mr. O'Malley: I would like to call the Court's attention to 15 USC 21, which provides the authority to the Federal Reserve Board to enforce the anti-price discrimination provisions of the Robinson-Patman Act, which is found in 15 USC 13, against banks specifically.

By Mr. O'Malley:

Q. Now at page 996 of your testimony, Professor Wolf —excuse me, page 994, in discussing freedom of entry into the banking markets, you indicated that competition might be hampered because entry is controlled by the state bank- [fols. 1173-1176] ing authorities or the Comptroller of the Currency, and you concluded here in this case entry is not free, you have to ask for it and sometimes people are turned down, and sometimes they are turned down because the banking authorities think that the situation is already competitive enough and adequately banked. This is their judgment; it is the judgment of a banking authority. It is not the judgment of the market place.

Now, doctor, do you know if any application for a charter, state or national, has been filed in Davidson County since 1958?

A. Any application for a charter in Davidson County that has been filed since 1958?

Q. Yes.

A. Well, the Capital City Bank filed for a charter in 1960.

Q. And that was obviously granted.

A. And that was granted.

Q. Now do you know of a single charter application filed from Davidson County with either the state or federal banking authorities which was denied?

A. No, I don't.

* * * * * * *

[fols. 1177-1188] Q. Let us stick to the question, please, doctor. The question was whether you agree that considerations other than pure concentration ratios must be taken into consideration in assessing the competitive situation in a given market.

A. Well, you must begin, with the concentration ratios, and then there are other relevant monopoly and competition facets that must be looked into.

* * * * * * *

[fols. 1189-1191] ANDREW B. BENEDICT, JR., was called as a witness by and on behalf of the Plaintiff, and, after having been first duly sworn, was examined and testified as follows:

Direct examination

By Mr. Weinbaum:

* * * * * * *

Q. What is your occupation?

A. I am the president of the First American National Bank of Nashville.

* * * * * * *

[fol. 1192] Q. As of late 1963, were you generally familiar with the size according to deposits of the Nashville Bank and Trust Company?

A. Yes, sir.

Q. Can you state what the approximate deposit size of that bank was?

A. About \$42 or \$43 million—\$42 million. That's approximate.

Q. Was there any particular geographic area in which Nashville Bank and Trust Company concentrated its efforts?

A. Geographical area?

Q. Yes.

A. I would say within the county.

Q. To your knowledge, Mr. Benedict, did Nashville Bank and Trust Company offer most of the same types of serv-[fol. 1193] ices in Davidson County that your bank offered?

A. I would say a great many similar services, with the exception of correspondent bank services and foreign service, and maybe some other specialized services.

Q. In terms of scope of services offered by the various banks in Davidson County, would you say that Nashville Bank and Trust Company is more comparable to your bank or to ones the size of Capital City Bank and Goodlettsville Bank?

A. To ours.

Q. Since 1955, and up through the early part of 1964,

have you had an opportunity to observe the rivalry, if any, which has existed among banks located in Davidson County?

A. Yes. '55 to '64?

Q. Right.

A. Yes.

Q. As of late 1963 and early 1964 could you please state which, if any, banks located in Davidson County were considered to be the chief rivals of First American National Bank?

A. Well, that would be the Third National Bank, Commerce Union Bank, and the Nashville Bank and Trust Company.

[fol. 1194] Q. Mr. Benedict, we would like to turn our attention to a consideration of demand deposits, and I would, with the Court's permission, like to show the witness Government Exhibit 1000, which is stipulations of fact, Your Honor.

The Court: All right.

Mr. Weinbaum: Calling the witness' attention to stipulation of fact number 19. This stipulation reads:

"The bulk of the IPC deposits of each commercial bank located in Davidson County originates from customers having residence or business addresses within Davidson County. The following are the percentages of such deposits according to number of accounts and dollar value held by each bank as of December 20, 1963."

By Mr. Weinbaum:

Q. And I would like to ask, Mr. Benedict, if this stipulation and the percentages listed, according to number of accounts and value under demand deposits would indicate that in fact the substantial number of accounts as to Third National Bank, Nashville Bank and Trust Company, and First American do in fact derive from the Davidson County area?

A. What is this? This value? What is that?

Q. That is percentage according to value.

[fol. 1195] A. Percentage, yes. The three banks, they do, yes.

Q. Both with regard to number of accounts—

A. And value.

Q. —and value?

A. Yes.

Q. From this tabulation, Mr. Benedict, is it clear to you that each of these three institutions derive the greatest percentage of its demand deposits, IPC demand deposits, from within Davidson County.

A. Yes, sir.

Mr. Weinbaum: With the Court's permission, I would like to hand the witness a copy of Government Exhibit 543.

Your Honor, this is an interrogatory 32 and the answer supplied by the defendants pertaining to difference size categories of deposits and loans and in connection with those categories certain questions were asked the defendant banks.

With regard to the categories, the size categories set out, the question was asked of Nashville Bank and Trust Company and Third National Bank to state the extent of each of the defendant banks' interest in securing deposit account in each such size category.

[fol. 1196] The defendant banks answered, and I should like to read that answer into the record:

"With respect to demand deposits and time and savings deposits within the ranges stated, both the Nashville Bank and Trust Company and Third National Bank, have a keen interest in acquiring accounts in all size categories."

By Mr. Weinbaum:

Q. Mr. Benedict, would you agree or disagree with that statement as being the policy of First American National Bank?

A. We have a keen interest in acquiring accounts in all size categories.

Q. Mr. Benedict, I would like to turn your attention to the second page of this document which sets out the various percentages of accounts in the demand deposit category according to number of accounts and dollar amount. I would ask you to look at the precentages for Third National Bank and the percentages for Nashville Bank and Trust Company, and indicate whether in your opinion the breakdown from one percentage to the next, both asto percentages in number of accounts and dollar amounts would be substantially similar for those two institutions.

A. Yes, they are. Substantially so.

Q. Would you have any idea, Mr. Benedict, as to whether [fol. 1197] the array of accounts in each one of these categories for your own bank would be substantially similar or not?

A. Ours would be—since these are similar, ours would be substantially similar to these two, yes.

Q. Thank you.

A. I'd say we would be a little closer to the Third.

Q. In other words, are substantially similar to Nashville Bank's?

A. Right.

Q. And therefore, yours would be substantially similar to those of both institutions?

A. Correct.

Q. And you would know of no reason why your bank's persentages would not be substantially similar?

A. No, sir.

Q. Mr. Earthman—excuse me.

A. Thanks for the compliment.

Q. Excuse me, Mr. Benedict.

A. Yes, sir.

Q. Mr. Benedict, would these figures both as to percentage of business derived from Davidson County and the size categories set out in this exhibit 543 indicate to you that there is a rivalry between your bank and Nashville Bank and Trust Company for demand deposit business in the IPC category?

[fol. 1198] A. Yes, sir, there is.

Q. And could you characterize, if you are able to, the extend of this rivalry between your bank and Nashville Bank and Trust Company?

A. In recent years, the competition, rivalry between the two banks has been keen, very keen.

Q. Would you be in any position to indicate whether, in your opinion, the rivalry for IPC demand deposit accounts between your bank and Nashville Bank and Trust Company was such that you would consider Nashville Bank and Trust Company to have been a major competitor for such accounts?

A. For these demand accounts?

Q. Yes, sir.

A. Yes, they are, they were a major competitor.

Q. And this viewpoint, Mr. Benedict, is this based on your experience as well as the statistics that you have just reviewed?

A. Yes, sir.

Q. Could you please explain what other types of deposit accounts there are besides IPC demand deposit accounts?

A. IPC is individual, partnership and corporation accounts, and there are bank deposits, political—states, sub-[fol. 1199] divisions, municipalities—there are time deposits and savings deposits.

Q. Mr. Benedict, can you indicate what proportion of IPC demand deposits and time and savings deposits, what share of your total deposits these would reprecent?

A. What percentage that the two figures, or separate figures?

Q. The combined IPC deposits, would they or would they not comprise a substantial portion of your total deposits?

A. They would, yes. The time and demand?

Q. Yes, sir.

A. Not including bank?

Q. Yes, sir.

A. Time and demand?

Q. Yes, sir.

A. Yes, they would be a substantial portion.

Q. And this would not include deposits of political entities?

A. No, sir.

Q. Does First American do any auto loan business, Mr. Benedict?

A. Yes, sir.

Q. And can you describe the types of auto loans that First American makes?

A. Types of loans?

[fol. 1200] Q. Yes, sir.

A. We handle all types of automobile loans. We have a good many dealer accounts, and for those dealers, we floor plan their automobiles until they are sold. Then we handle —then we in turn get the consumer paper from the dealer, mostly from the dealer, although we do compete in the direct—we do handle direct automobile loans also.

Q. Do you advertise the availability of automobile loans?

A. Yes, sir.

Q. And in these automobile advertisements, do you indicate that your prospective customers should go to their automobile dealer first?

A. As a matter of policy, we advertise that we want to handle the automobile paper for those persons we are advertising to for, and we suggest they go to their dealer or if they prefer, they can go to one of our branches, and we would handle it direct, however, we always emphasize the fact that they should go to their dealer.

Q. Has there ever been an occasion when you have not mentioned in an ad that a person go to his dealer?

A. I think as a matter of fact, that we did on one ad, but as a matter of policy, we do mention the dealer.

Q. Generally you mention the dealer?

A. Right.

[fol. 1201] Q. Are you generally familiar with the manner in which Nashville Bank and Trust Company solicited automobile loans?

A. Generally, yes.

Q. Are you aware of whether or not Nashville Bank and Trust Company did any floor planning as a general policy?

A. As far as I know, they did not; they advertised for direct loans, and I know of no instance where they floor planned, although I don't know that they didn't.

Q. Can you state, Mr. Benedict, whether or not there was any competition between your bank and Nashville Bank and Trust Company with regard to consumer, that is nondealer, automobile financing?

A. To the extent we handle direct loans, we compete with the Nashville Trust Company for direct loans.

Q. Can you indicate whether there was any competition between the two institutions for automobile loans to the extent that dealers referred customers out to First American Bank and Nashville Bank and Trust Company dealt directly with a customer?

A. I'm not sure I understand the question; would you state it again?

Q. Yes, sir. The method of financing loans to consumers between the two banks was to an extent different?

A. Yes, sir.

[fol. 1202] Q. In that dealers referred customers out to

you, and Nashville Bank and Trust Company did not deal through a dealer, is that correct?

Mr. O'Malley: Objection, Your Honor. That was not the witness' testimony; he said he didn't know for sure whether they did or not.

The Court: Well, let's see what he says in response to question.

By Mr. Weinbaum:

Q. Is that correct, Mr. Benedict?

A. The mechanics of our transactions in the main were that we had contacts with dealers throughout the immediate area, and in order to cement these contracts, we floor planned their cars until they were sold. When the automobiles were sold, then the dealer would take a note on our form, on a form that we use, and then the dealer would bring that paper to us for discount, and we would then send the consumer, so to speak, a coupon book, who would make payments directly to us.

That was the mechanics to us. So it was more than a referral that the dealer discounted, so to speak, under various arrangements, some with full recourse, some with repurchase agreements, some with others.

Q. On these consumer loans, did you face competition from Nashville Bank and Trust Company?

[fol. 1203] A. On the direct loans, we competed with them for the individual direct loans in the automobile area.

Q. When you say direct loans, I don't mean to belabor this, but what——

A. That is where the person who purchases the car comes to the bank himself and negotiates with the bank for the financing. That's what we term a direct loan.

Q. Mr. Benedict, did you find with regard to automobile financing that certain people preferred to deal directly with a bank as opposed to going to the dealer?

A. Yes. Yes, certain people, yes, sir, they did.

Q. To the extent that people prefer to go directly to a bank, can you indicate whether this was a type of competition in relation to those persons who would go to a dealer and then be referred out to a bank?

A. Ask me that again.

Q. Is there competition in the referral—is there competition in the referral out to a bank from competition directly to a bank?

A. From dealers, is there competition among dealers?

Q. No, sir. Are you, through your referral-out type of a procedure——

A. That is through a dealer now?

Q. Yes.

[fol. 1204] A. Yes.

Q. Competing with commercial banking institutions who choose to go directly out to a customer?

A. To some extent, yes, sir.

Q. And are you both not competing for the same type of a customer who is seeking an automobile loan?

A. We are for automobile finance loans, right.

Q. Can you indicate whether or not Nashville Bank and Trust Company, in automobile loans, was a major competitor in Davidson County?

A. They were a keen competitor and I would say a major competitor in their promotion and in their advertising for direct automobile loans, and on that basis, they were a major competitor of ours in that area.

Q. Are consumer loans other than automobile loans important to an institution like First American?

A. Yes.

Q. And can you briefly describe the nature of some of these personal loans, what they——

A. Consumer loans?

Q. Yes, sir.

A. Well, there are loans to finance various purchases, washing machines, dryers, lawnmowers, home improvement loans. sewing machines, practically al major items can be financed through banks.

[fol. 1205] Q. Is the consumer loan a type of loan through which a bank would generally reach a large segment of the public, more so than with other types of loans?

A. A large segment?

Q. Yes.

A. I think most of the public finance certain items through that means.

Q. Can you state whether or not consumer loans, particu-

larly of the installment nature would yield a particularly high rate of interest to a commercial bank?

A. It's desirable paper for a commercial bank.

Q. Did First American meet up with any competition from Nashville Bank and Trust Company for such consumer loans?

A. To some extent, not on the direct basis, yes, but percentage wise, not a great deal.

[fol. 1206] Q. What do you mean by a direct basis?

A. Consumer loans are handled through dealers, similar to automobile paper, you see. When you consider the whole picture, they were competing. But I don't think we had competition from the Nashville Bank and Trust Company on an appliance dealer basis.

Q. How about for such other personal loans——

A. Oh, yes, monthly repayment personal loans. They had a department set up for that, and we did likewise. We did compete in that area.

Q. And, as far as the competition in that area is concerned, how would you characterize it, Mr. Benedict?

A. On a personal loan basis, there was keen competition between us and them.

Q. Did any competition for commercial and industrial loans exist betwen your bank and Nashville Bank and Trust Company?

A. Business loans, commercial, and industrial loans?

Q. Yes sir.

A. Yes.

Q. Is First American interested to any great extent in this type of business?

A. To a great extent.

Q. Can you describe some of the commercial loans that [fol. 1207] would be entailed? What is a commercial loan?

A. It is a loan to a business for working capital purposes or acquisition purposes and general conduct of their business.

Q. Did you consider Nashville Bank and Trust Company in late 1963 and early 1964 to be a major competitor of yours for commercial and industrial loans?

A. Up to a certain size, yes.

Q. The record indicates, Mr. Benedict, that the single-loan limit of Nashville Bank and Trust Company in late

1963, using its fifteen percent stated standard, was about $670,000; and it could loan, using its twenty-five percent limit under state law, up to $1,090,000.

Would you deem these lending limits to be of significance?

A. Yes.

Q. Would you believe these lending limits sufficient to accommodate a good share of potential loan customers in Davidson County?

A. A good share?

Q. Yes, sir.

A. A good many, yes, sir.

Q. To the extent that Nashville Bank and Trust Company competed with First American for loans up to these single-loan limits, how would you characterize the competition [fol. 1208] between the two institutions?

A. Strong competition in that area.

Q. Would you say that the rivalry——

A. You are speaking of the 1960's now; is that right?

Q. Yes, sir.

A. Yes.

Q. Would you be able to characterize such competition from Nashville Bank and Trust Company as major competition?

A. Yes, sir.

Q. Mr. Benedict, I would like to refer once more to this Government Exhibit 543, which is in front of you. Turning to the bottom of page 2 and the top of page 3, I would like to ask whether——

A. 3(b)?

Q. Yes, sir. And then on page 3, the total loan for Nashville Bank and Trust Company, in the center of that page.

A. All right, sir.

Q. What we would like to ask, Mr. Benedict, is whether or not, looking at the array of total loans by number and dollar amount for each of those institutions, in your opinion they are substantially identical?

A. Yes, sir, they are substantially the same.

[fol. 1209] Q. Do you have a familiarity, Mr. Benedict, generally with the sources of your total loans according to various size categories?

A. Generally so, yes, sir.

Q. Would it be your belief that First American's loan array in the various categories would be substantially similar to those indicated in that document?

A. Yes, sir, they would be substantially the same.

Q. Mr. Benedict, you have described the rivalry between First American and the Nashville Bank and Trust Company for various types of loans. We ask whether or not the statistics set out in that exhibit in your opinion are consistent with your description of this rivalry?

A. Yes, sir.

Q. To what extent, if at all, did you compete with Nashville Bank and Trust Company in the mortgage or real estate loan category?

A. We have not had a formal mortgage loan or real estate department. Until recent years we didn't handle a great number of mortgage loans. So we were not as active in this field as we are now.

Q. Are there other banks in Davidson County that did place more emphasis on real estate loans as of late 1963?

A. The Nashville Bank and Trust Company had a real estate and mortgage loan department. The Third National [fol. 1210] Bank—the Third National Company handles mortgage loans. We were just not in that field.

Q. Did the Nashville Bank and Trust Company seek mortgage loans to a greater degree than First American did?

A. I would say yes.

Q. Would you believe that Nashville Bank and Trust Company, to the extent that it placed more emphasis on mortgage loans, was a major factor for mortgage loan business among commercial banks in Davidson County?

A. Yes, sir.

Q. Mr. Benedict, to your knowledge did the Trust Company endeavor to grow by soliciting new business accounts?

A. In recent years, yes.

Q. When you say recent years, could you please state what you mean?

A. They, I am sure, solicited accounts; but they solicited them more aggressively since Mr. Hackworth became president of the bank.

Q. From approximately 1956?

A. The middle fifties.

Q. Did Frst American's new business solicitors encounter Nashville Bank and Trust Company's new business solicitors?

A. Yes.

Q. Are you aware of those individuals at the Trust Com- [fol. 1211] pany that were largely engaged in soliciting new business?

A. Yes, sir.

Q. And can you indicate who those folks were, please?

A. I think Mr. Hackworth brought in business to the Trust Company, and Mr. Kirby Primm; Mr. Buquo was soliciting; Mr. Thompson to some extent.

Q. To your knowledge did these people go out and solicit all types of commercial banking business?

A. Yes, I think Mr. Primm was their principal solicitor.

Q. Mr. Primm works for you at the present time, Mr. Benedict?

A. Yes, sir, he does.

Q. What were the circumstances of Mr. Primm's going to work for First American National Bank?

A. Mr. Primm was with the Nashville Trust Company practically all of his business life except for the time he spent in the Navy. When the Trust Company was acquired in the early part of 1964, Mr. Primm advised us that he told Mr. Hackworth that was not in the new—he didn't go along with the acquisition, and he gave him notice that he severed his connection with the Trust Company and he came up to us and asked us if we would give him a job; and we did.

[fols. 1212-1214] Q. Did you at any time take the initiative in going out and attempting to hire Mr. Primm for First American National Bank?

A. We never would discuss hiring Mr. Primm until he became a free agent. So we did not make him any offers until he notified us that he was no longer connected with the Nashville Bank and Trust Company. It was not any prearrangement.

Q. Can you state whether or not in your opinion the trust department of Nashville Bank and Trust Company was of major size and consequence among the trust departments of commercial banks located in Davidson County?

A. We never had access to those figures, but we considered them to have a large and execellent trust department.

Q. Did you have any opinion as to the quality of its trust accounts or trust assets?

A. As to the quality?

Q. Yes, sir.

A. It had some very fine accounts.

* * * * * * *

[fol. 1215] Q. Mr. Benedict, what I mean is: How often will a country bank ask for money from First American in an amount which would be in excess of First American's legal lending limit?

A. Not very often. It would be an unusual transaction, but it can happen.

Q. But it is rare?

A. It is not normal, not the usual transaction.

* * * * * * *

[fol. 1216] Q. In your judgment is it unusual for a bank with $42 million in deposits not to have a correspondent banking relationship of any magnitude?

A. Is it unusual for it not to have?

Q. Yes, sir.

A. No, it is not.

Q. In your opinion, Mr. Benedict, did the lack of correspondent banking operations impair Nashville Bank and [fol. 1217] Trust Company in regard to its competitive efforts in Davidson County?

A. In the areas in which they competed with us?

Q. Yes, sir.

A. No.

Q. In late 1963 and early 1964 did First American have any sort of a business relationship with Nashville Bank and Trust Company?

A. Yes, sir.

Q. Can you describe this relationship?

A. We cleared their out-of-city items. They were a correspondent bank of ours.

Q. There has been testimony that a bank will not compete with its correspondents, and we would like you to indi-

cate, Mr. Benedict, whether this was or was not true in regard to your relationship with Nashville Bank and Trust Company.

A. We did compete with them, although it is usual not to compete with a correspondent bank. But in this instance we did compete with them, particularly in later years.

Q. And this relationship you just spoke of in no way impeded your competition, restrained your competition, with the Trust Company?

A. I would say that we actively competed with the Trust Company for local business.

[fol. 1218] Q. Were you familiar, Mr. Benedict, with any of the officers of Nashville Bank and Trust Company in late 1963 and early 1964?

A. Yes.

Q. I wonder if you would comment on the professional competence of Mr. Overton Thompson?

A. A very competent man.

Q. Mr. Fitzgerald Parker?

A. He was particularly in trust, but he was an excellent trust man.

Q. Mr. Alldred?

A. Yes, sir, he was in the commercial banking department, and a good commercial bank officer.

Q. Were there any other officers who particularly stand out in your mind worthy of mention?

A. In the Trust Company?

Q. Yes, sir.

A. Mr. Hackworth and of course Mr. Hill, Mr. Cheek. And there were others—but Mr. Cheek was in their trust department and a very good man, in my opinion.

Q. Were you aware, Mr. Benedict, of the fact that Mr. Hackworth was approaching retirement age?

A. Yes, sir.

Q. In your judgment might there have been anybody at the Trust Company qualified to assume the presidency of [fol. 1219] that bank?

A. We were of the opinion that probably Mr. Thompson would be the next president, although it was just an opinion. Mr. Parker had been mentioned at one time as perhaps the presidential successor. But I would say that those two

men were the ones that we heard mentioned as possible candidates to succeed Mr. Hackworth.

Q. Assuming there was not anybody in the Trust Company deemed qualified to move up to the presidency, were there any other alternatives in your opinion which may have been pursued for obtaining a new president?

A. Any other alternatives?

Q. That's right, as a source outside the bank for obtaining a new president?

A. Of course good personnel, particularly top personnel, in the banking business are not plentiful. But it is possible they could have gone out of town or maybe have gotten someone else to be president of the bank.

[fol. 1220] Q. Do you know of any other banks in the city that have obtained officers from outside their bank?

A. I expect that sometime or other, all of the banks in town have done it. Commerce Union have acquired some men lately to complement their officer staff, but it's not generally done, I'd say, in Nashville, but it has been done.

Q. Generally, Mr. Benedict, where do you derive most of your officers from?

A. Most of ours we promote from the ranks, from personnel in the bank, although we have obtained other men, men from outside.

Q. In your opinion, would it be easier for a bank of larger size to promote men from within than it would be for a small institution?

A. I think so, yes, sir.

Q. What benefits in your judgment have accrued to Third National Bank as a result of this merger, Mr. Benedict?.

A. What benefits?

Q. Yes, sir.

A. Well, the bank had forty-five million dollars in deposits at the time—around that, forty-two or three. They acquired, in our opinion, an excellent trust department, and they acquired the reputation of the Nashville Bank and Trust Company which went with it, I assume, to some extent.

[fol. 1221] Q. Do you believe that the reputation is a worthwhile asset to acquire?

A. The Nashville Bank and Trust Company was always

a well-regarded institution in this area. I don't think there's any doubt but that it had an excellent reputation.

Q. When the sale of Nashville Bank and Trust Company to Mr. Weaver was announced, did First American make any additional effort to solicit the old customers of the Nashville Bank and Trust Company?

A. Any additional effort?

Q. Yes, sir.

A. No, we were soliciting them actively before this time.

Q. Is it your opinion, Mr. Benedict, that there were people who had done business with Nashville Bank and Trust Company that were not willing to do business with other institutions in town?

A. Would you repeat that?

Q. Yes, sir. To your knowledge, Mr. Benedict, were there people who banked with the Trust Company whom other banks were not able to obtain as customers prior to the merger?

A. Well, we were unable to get a good many of them, and I presume the other banks couldn't either, since they stayed [fol. 1222] with the Trust Company.

Q. Do you know of particular instances of your own knowledge where a person would bank only with the Trust Company?

A. Yes, sir, I do, in some instances.

Q. Excuse me?

A. Some instances, yes, sir.

Q. Now, Mr. Benedict, in what year did First American National Bank institute automation?

A. 196—in the summer of 1962.

* * * * * * *

Cross-examination.

By Mr. Hooker:

* * * * * * *

[fol. 1223] A. The Nashville Bank and Trust Company has been our correspondent ever since we—we owned the Trust Company at one time, and established it as a separate entity and it's been our correspondent since that time.

Q. Hasn't there been a long-standing attitude of helpfulness between the First American National Bank and Nashville Bank and Trust Company?

A. Yes.

Q. What services does First American National Bank normally provide for its correspondents?

A. Well, we clear their items for them, we provide investment advice, we handle transfers, we perform safe-keeping services for them, and others.

Q. Do you normally assist your correspondents in their efforts to get new accounts?

A. Yes, sir.

Q. Did you ever assist the Nashville Bank and Trust Company in any way?

A. Did we ever assist them?

Q. Yes, sir.

[fol. 1224] A. Yes, sir.

Q. Did you ever assist them in obtaining an account?

A. Yes, sir.

Q. Did you have a different relationship with the Nashville Bank and Trust Company from the other banks with which you competed in Nashville?

A. We had a correspondent relationship with them as we didn't have with the other banks.

Q. What size balances did the Nashville Bank and Trust Company carry with you, sir?

A. Substantial balances.

Q. You were not anxious to lose those balances, were you?

A. No, sir.

Q. When did you come in contact with the Nashville Bank—excuse me. When you did come in contact with the Nashville Bank and Trust Company, what officers or directors were primarily involved?

A. Competitive contact?

Q. Yes, sir.

A. Or the other.

Q. Competitive.

A. Well, Mr. Primm——

Mr. Weinbaum: Excuse me, we object to the form of the [fols.1225-1226] question, there's no indication that any officers or directors were involved.

The Court: Well, that's what he's asking.

Mr. Hooker: Yes, sir.

The Court: To find out.

Mr. Hooker: Yes, sir, I'm trying to find out who they were.

The Court: All right, go ahead.

By Mr. Hooker:

Q. Who were they?

A. Will you ask me again?

Q. When you did come in contact with the Nashville Bank and Trust Company, in competitive contact with them, what officers or directors were primarily involved?

A. Well, Mr. Primm, Mr. Hackworth, and Mr. Hill, and Buquo, a good many of them.

Q. What percentage of this competition would you estimate was attributable to Hill, Hackworth and Primm?

A. The majority of it.

Q. Mr. Thompson and Mr. Parker were primarily in the trust department, were they not?

A. Mr. Parker was, and I think Mr. Thompson was too, although he was in the commercial department, I think, for a time.

* * * * * * *

[fols. 1227-1229] Q. What does the size of the loan limit have to do with the growth of the community?

A. The larger the loan limit, the more easily the community grows or it's helpful to the growth of the community.

* * * * * * *

[fol. 1230] Q. In seeking a new president for a bank, [fol. 1231] would the necessity to make other management replacements and the necessity to supplement the management staff in other positions be a difficulty in your judgment?

A. In the Nashville Bank and Trust Company?

Q. In any bank. If you were asked to consider becoming president of any bank and you found that they had to provide other management replacements and supplement man-

agement staff other than the president, would that have anything to do with your judgment as to whether you should do it?

A. If I had to build the organization all down the line, is that what you mean?

Q. Yes, sir.

A. Yes. Yes, it would have.

* * * * * * *

[fol. 1232] Q. Is most of First Amerieau's trust business obtained from its own commercial customers?

A. Most of it?

Q. Yes.

A. Yes, sir.

* * * * * * *

[fols. 1233-1234] Q. When you employed Kirby Primm, did he spend the early part of his employment with you actively soliciting savings account customers and commercial customers of the Nashville Bank and Trust Company?

A. The early part of his employment?

Q. First few months.

A. The first few months he did. He didn't immediately start soliciting accounts on an active basis, although he did, I'd say, after thirty days.

Q. When he did start soliciting, did he solicit those firms——

A. Yes, sir, he actively solicited them.

Q. Did you emphasize in your staff meetings such solicitation?

A. Possibly. We try to emphasize all solicitation in our staff meetings of all accounts, but I don't know what—ask me the question again, I'll try to give you a direct answer.

Q. I said did you emphasize in your staff meetings such solicitation?

A. Yes, sir. Yes.

* * * * * * *

[fol. 1235] Q. On the April 5 call date, 1966, how much larger were you in deposits than the Third National?

A. Well——

Mr. Minicus: May the witness have the statements if we can get them out? It might be able to give him more information on these points.

The Witness: The April 5 call, I don't have.

By Mr. Hooker:

Q. You don't have the April 5 call date?
A. Not with me. Some larger.

Mr. Minicus: We may have them here.

We don't have them, Your Honor.

By Mr. Hooker:

Q. Could you approximate that, subject to correction?
A. It is a matter of record, Mr. Hooker. We publish our statements at the end of the quarter. I would say some thirty million dollars.
Q. You would say that you were some thirty million dollars larger——
A. We are talking about deposit-wise.
Q. —in deposits as of April 5, 1966?
A. I would say so.
Q. Is that the widest disparity between those two banks since the merger in deposits, the largest dollar amount?
[fols. 1236-1255] A. That's right.

* * * * * * *

Joseph Futoran, was recalled as a witness by and on behalf of the Plaintiff, and, having been previously sworn, was further examined and testified as follows:

* * * * * * *

[fol. 1256] Cross-examination.

By Mr. O'Malley:

[fol. 1257] Q. Now, if Third National Bank has not increased its service charge schedule on personal checking accounts since December, 1963, is it then a fact that the merger of Nashville Bank and Trust into Third National

Bank has not affected the service charge schedules charged by the three larger banks in Nashville?

A. I don't know about the effect, sir, but the facts are that charges of the First American National and the Com-[fols. 1258-1292] merce Union Banks have not changed?

Q. Since before the merger?

A. Since before the merger, yes, sir.

* * * * * * *

[fol. 1293] SAM M. FLEMING, was called as a witness by and on behalf of the Defendant Banks, and, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Parks:

Q. Mr. Fleming, state your name and address and your position.

A. I am Sam M. Fleming. My address is 810 Jackson Boulevard, Nashville, Tennessee. I am president of the Third National Bank here in Nashville.

Q. Will you briefly trace your career in the banking business?

A. I started out in my native town of Franklin, Tennessee, as a runner at eight years old. I worked on Saturdays in the summers until I finished college. I then took a position with the New York Trust Company in New York, where I continued until 1931.

I came back to Nashville and was identified with the Third National Bank, and have been since, with the exception of three years when I served in the United States Navy.

Q. Will you tell us of any positions you have held in the banking industry outside of the Third National Bank?

[fol. 1294] A. I was vice-president of the American Bankers Association in 1960-61. I served as president of the American Bankers Association in 1961 and 1962. I am a member of various banking associations, including the Rob-

ert Morris Associates, and the Association of Reserve City Bankers.

I am currently serving as a member of the Federal Advisory Council, representing the Sixth District, which is roughly the Southeast.

Q. Have you held any other governmental positions?

A. I have been on various committees and councils. Perhaps the most recent, I served as one of the organizers and vice-chairman of the Business Committee for Tax Reduction, which was organized under President Kennedy and continued by President Johnson.

Q. Mr. Fleming, will you recount the events and conversations with Mr. Weaver that led up to the merger of Third National Bank with Nashville Bank and Trust Company?

A. The first information that I had regarding the purchase by the Weaver associates of the controlling stock interest in the Nashville Bank and Trust held by the Hill Company was a telephone call from Mr. E. W. Johnston, chairman of the board of the Third National Bank, to me in Puerto Rico, where I was on vacation.

He stated that Mr. Weaver and Mr. Edwin Craig had [fol. 1295] just been by the bank to inform us of the purchase prior to any publicity releases.

They also emphasized that there would be no change whatsoever in the extremely satisfactory relationships which we had enjoyed for a number of years, both with the National Life and Accident Insurance Company and the Nashville Bank and Trust Company.

That was on January 23. I returned home late the next night, which was a Friday. The first thing Saturday morning, I called Mr. Craig and asked that I come by to see him at his home. I did so, and thanked him for the courtesy which he and Mr. Weaver had shown in informing us of the purchase of the Weaver group; and also to express our great appreciation of the fact that there would be no change in the relationships we had enjoyed for so many years.

I told Mr. Craig that I hoped he would let us know if we could render any possible assistance to the group at any time.

I then tried to contact Mr. Weaver, and he was out hunt-

ing, as I recall. But I did go by his home after dinner that night and we had a nice visit together of about an hour.

I told him substantially the same thing that I had Mr. Craig. He thanked me also for the sentiments I expressed, and mentioned that he and his associates were purchasing the stock strictly as an investment; that he had no inten-[fol. 1296] tion of becoming actively connected with the bank. In fact, his duties at the National Life would have prevented that. And that he doubted very much that he would even go on the board of directors of the Nashville Bank and Trust.

The next contact that I had with Mr. Weaver was on February 10, some two weeks later, at a reception which Mr. Rufus Fort was giving for the out-of-town visitors who would attend the annual meeting of the National Life the next day.

We had a very pleasant visit together; but, as I recall, there was no mention of a merger or intent to merge at that time.

It was about then, though, that I heard rumors that Mr. Weaver had been seen in the presence of senior officials of the Commerce Union Bank, and that there was a possibility that some discussion had taken place regarding a merger or sale of the Nashville Bank and Trust holdings by the Weaver group.

So when I saw Mr. Weaver next on February 15 at a wedding reception at the Belle Meade Country Club, I got him off in a corner and asked him if he had made any deal of any kind with the Commerce Union Bank. He replied emphatically, "No."

I said, "Well, I would like very much to have a chance to sit down and talk with you at your convenience. I have [fol. 1297] a few matters that I would like to explore and I think might be of interest to you. He said, well, he was going to have to do some traveling and that he would be quite busy for the next week; but that he would try to arrange such a meeting when possible, when time permitted.

The next time I saw him was nearly a week later, on Friday, February 21, when some ladies in Nashville were giving a luncheon in the directors' room of the Third National Bank. Both Mr. Weaver and I attended this lunch-

eon, and I asked that he stay behind for a few minutes to talk with me.

The rumors were still current about the Commerce Union's interest in merging or buying this stock. I asked Mr. Weaver again would he please sit down with me for an hour or so and let me explore various things with him.

He looked at his notebook and he said, "Well, come out to my home for breakfast the next morning," which was a Saturday. I did, and we talked for three or four hours.

I tried to point out to him some of the problems as I saw them that existed that had to be resolved at the Nashville Bank and Trust. I mentioned to him that I felt that they possibly best could be resolved, since he had no intention of taking an active part in the management, by merging with a bank like ours.

He asked me a lot of questions that were strictly noncommittal. I asked him couldn't we pursue this conversation [fol. 1298] at a later date. He looked at his engagement book again and said he was going to be busy for the next week; but he thought maybe we could get together the following Saturday.

So I suggested breakfast at my home. He came over that morning, and we talked again for several hours, pretty much along the same line that we had at his home the week before.

At that time we set a luncheon meeting for just the two of us in one of our private dining rooms at the bank for March 4, which was the middle of the next week. We then had a meeting of minds as to what Mr. Weaver wanted to do and what we were willing to do.

We wrote down a penciled memorandum, provided, of course, it was satisfactory to his resources and provided it was satisfactory to my colleagues and associates at the bank that a merger would be arranged where four and a half shares of Third National Bank would be exchanged for one share of Nashville Bank and Trust.

Mr. Weaver stated, as he had done in several of our other conversations, that he would not under any circumstances be interested in any transaction where all of the stockholders would not be given the same consideration as was his group.

He stated at this March 4 meeting that the agreement

[fol. 1299] also would be subject to the full approval of Mr. Hackworth, Mr. Edwin Craig, and of Mr. Horace Hill. He further stated that I would have to agree on the part of the Third National Bank to carry out in their entirety the commitments which he had made to Mr. Hill—namely, that a funded pension plan would be installed, and that the interests of the personnel of the Nashville Bank and Trust Company be looked after to the fullest extent.

He arranged then to get Mr. Craig to come back up from Florida nearly a week later, on March 10. As I recall, Mr. Craig, Mr. Weaver, Mr. Hackworth, and Mr. Hill, met in the early afternoon at Mr. Weaver's home; and late that afternoon, around five o'clock, they called me at the bank and asked would I come out and join them.

They told me that they had had a meeting of the minds and that everybody was in agreement in respect to the tentative deal that Mr. Weaver and I had agreed upon.

Then on March 11 the Weaver group purchased the stock and it exchanged hands from the Hill Company. On March 12, the boards of both the Nashville Bank and Trust and the Third National Bank unanimously approved the transaction and it was subsequently ratified by the stockholders.

Q. Why did you wish to merge?

A. In order to combine with a respected institution which had been in operation for some seventy-five years; to obtain [fol. 1300] a location which the people had been accustomed to using for a long time and to which was attached a very convenient garage; to obtain closer connection with such highly respected families as the Cheeks and the Hills; to obtain over a hundred additional stockholders of substance and good reputation; to be able to combine the trust departments of a seventy-five year old institution with a thirty-seven year old bank, and thus be able to formulate a trust operation which would be better able to serve both the existing and the growing needs for all types of trust services in the Nashville area.

[fol. 1301] Q. Mr. Fleming, the legislative history of the Bank Merger Act of 1966 indicates that there was considerable discussion to the effect that those banks which merged after the date of the Philadelphia decision did so with full notice and went ahead anyway.

Would you care to comment on that?

A. We were of course familiar with the Philadelphia and Lexington cases, and had discussed them in considerable detail with our counsel. Our counsel advised us that the facts in our case was entirely different from those of either the Philadelphia or Lexington cases.

We did not feel that the Nashville Bank and Trust was either meaningful or substantial competition to us. Also, it was quite clear that there were very definite banking and management factors involved, and there was considerable precedent as to the Justice Department's attitude through three similar type mergers which had recently taken place.

For instance, on June 29, 1963, the Birmingham Trust National Bank, the second size in Birmingham, applied for permission to merge with the Bank of Savings and Trust, the fourth in size in Birmingham, and created a resulting bank which had 31.21 per cent of the city's deposits and 32.77 per cent of the city's loans. The resulting bank was second in size in Birmingham. The merger was approved by the Comptroller and not attacked by the Justice Department.

[fol. 1302] On September 6, 1963, the National Bank of Commerce, second largest bank in Houston, Texas, applied for permission to merge with the Texas National Bank, fourth in size, to create a bank second in size in the city with over seven hundred million dollars of deposits. The merger was approved by the Comptroller and not attacked by the Justice Department.

In February, 1964, the Second National Bank of Philadelphia and the Provident Tradesmen Bank of that city applied for permission to merge to create a resulting bank with $516,000,000 in deposits, and thirty-one offices. It was approved by the Federal Reserve Board which was the governing regulatory body because of a state institution being involved, and was never attacked by the Justice Department.

All of these mergers were of the horizontal type involving banks in the same city that were to some extent competing with each other, and resulting in much larger institutions with percentages of increase greater than was the case with our merger.

We naturally felt they furnished a very definite precedent

and there was no reason why the Justice Department should single out our merger in Nashville, Tennessee, which involved an increase of less than five per cent of total bank assets in the county.

[fol. 1303] Also as I mentioned, it was quite evident that both banking and management factors were involved, and that our bank had never had a merger in its entire existence, and the Nashville Bank and Trust had not been involved in a merger for over thirty years.

Q. Mr. Fleming, I hand you Intervenor's Exhibit No. 1, which is the application to merge filed with the Comptroller, and I'll ask you if you will state how much work was involved in preparing that application.

A. We had about six of our officers that were employed full time for over six weeks in preparing—accumulating and preparing this data. I personally supervised its preparation with my principal helper being Charles W. Cook, assistant vice-president of the bank.

In addition to the full time people, a great number, additional number of our officers' time was involved in one way or another over this period.

Q. I believe, Mr. Fleming, the application, it's in two parts, one part is an exhibit section, and contains a number of charts and maps, and the other part contains a compilation of a great deal of material, and I'll ask you if the table of contents was prepared in accordance with instructions received from the Comptroller of the Currency?

A. Yes, the Comptroller of the Currency sent us out forms that had to be filled out, and this represents the [fol. 1304] answers that we had to those questions.

Q. And a great deal of the information contained in the application was required by the Comptroller's regulations?

A. Nearly all of it was.

Q. Now at the end of the application, Mr. Fleming, there is an affidavit, I believe, which bears your signature—I'm trying to locate that—but I'll ask you if you signed the application and swore to the accuracy of its contents?

A. I did and I assume full responsibility for the preparation of it.

Q. And do you now at this time reaffirm under oath in this trial all the statements of fact contained in that application?

A. I do.

Q. Do you also reaffirm under oath at this trial all of the expressions of opinion contained in that application?

A. I do.

Mr. Farris: If the Court please, at this time I'll ask for this application to be admitted not only for purposes of being material considered by the Comptroller, but to be admitted as proof in this case with the right of counsel to examine further on it as they see fit.

[fol. 1305] Mr. Minicus: Objection, on the grounds that the Court has previously ruled, the government is abiding by the Court's ruling in the matter, and we would like to have the matter remain in status quo until such time as we have opportunity to move more definitively on it.

The Court: Opportunity to what?

Mr. Minicus: To move more definitively in regard to it.

The Court: That will be satisfactory. I'll reserve final ruling on that.

By Mr. Farris:

Q. Mr. Fleming, during your career as a banker in Tennessee, have you become familiar with the pattern of banking in Tennessee?

A. Yes, I think I have.

Q. Will you describe that?

A. There are 218 cities and towns served by banks in Tennessee. 156 are served by only one bank; 50 are served by only two banks; nine by three banks; and three by seven banks. These three are Nashville, Knoxville, and Memphis.

It is rather significant to me that some of our fastest growing small cities such as Johnson City, Kingsport, have only two banks; Jackson, Tennessee only three banks.

[fol. 1306] Q. Now what is the pattern of banking in large neighboring cities?

A. Well, as of December 31, 1965, cities which we consider to be in our area had a concentration of deposits and loans by the three largest banks as follows:

Chattanooga, Tennessee, 100 per cent deposits; 100 per cent in loans;

Mobile, Alabama, 98.14 per cent; 98.67 per cent in loans;

Birmingham——

Mr. Minicus: Objection, Your Honor. I fail to see the relevancy of high degrees in concentration in other cities. It does not appear to be relevant to the concentration in this city. Furthermore, the witness has not testified with regard to these cities of any mergers that have recently taken place therein.

The fact at issue here, the illegality is not based alone upon the concentration, but the fact coupled with the concentration. There was a merger of two competitive banks within the city.

Mr. Farris: Mr. Fleming—excuse me, sir.

The Court: Are you withdrawing your question?

Mr. Farris: No, sir, I was just going to ask him for the next city, because I think that would clear up some of the [fol. 1307] comment of counsel.

Mr. Minicus: I ask that the answer be stricken with regard to the cities mentioned thus far.

The Court: You want me to rule on that, or do you want me to withdraw the question?

Mr. Farris: I'd like the Court to rule on it.

The Court: You started out as if you didn't expect me to rule on it.

Mr. Farris: Excuse me.

The Court: I think this is competent, and you can bring these points out on cross examination, of course, that you have mentioned.

Mr. Minicus: Yes, sir.

By Mr. Farris:

Q. What is the next city you were going to mention, Mr. Fleming?

A. Birmingham, Alabama, where I just mentioned a merger did take place recently between the second and fourth, deposits 93.59; loans 93.67.

Jackson, Mississippi, 98.04 deposits; 97.91 per cent in loans.

Memphis, Tennessee, with which Nashville, of course, is very competitive, deposits 92.26 per cent; loans 91.27 per cent.

Winston-Salem, North Carolina, which we are becoming [fol. 1308] more, increasingly competitive because of their

extensive state-wide branching systems there, deposits 90.08 per cent; loans 89.57 per cent.

Now also, I think it is significant that there are 7,700 towns in the United States served by only one bank, and 1,800 served by only two banks.

In other words, of the approximately 14,000 banks in the United States, 11,300 or more than seventy-five per cent were in towns or cities served by not more than two banks.

Mr. Minicus: If Your Honor please, I wish my previous objection to apply to all of the testimony to this point as well on the grounds of concentration in other cities does not excuse concentration, plus a merger in Nashville.

The Court: Yes, the same ruling.

By Mr. Farris:

Q. Mr. Fleming, in your opinion, does this banking system you have described to some extent adequately meet the needs of the community served by these banks in this nation?

A. During my term as vice-president and president of the American Bankers Association, I had an opportunity to address some twenty-seven different state banking associations. I was tremendously impressed, and still am, with the [fol. 1309] caliber of the men who run our banks, and the quality of the services which the banks offer.

I am thoroughly convinced that our dual banking system in cities, towns, and hamlets is one of the principal reasons for the great growth and prosperity of our nation.

Q. Now, Mr. Fleming, how much information did you have regarding the condition of the Nashville Bank and Trust Company before the agreement to merge?

A. We did not have a great deal of detailed information. We had the published statement, comparative operating figures for 1963 and 1962, a list of the officers' salaries, and a rough estimate of the amount that would be necessary to fund the pension plan.

Q. Had you seen a copy of examiners' reports?

A. We had seen the Tennessee Department of Banking report, but not the FDIC, and also not the confidential sections of either report.

Mr. Minicus: Could we have that over here, Your Honor?
The Court: Yes, get the bailiff over there.
Now let's see, turn it just a little bit this way, and suppose you come over here, Mr. Fleming.

(The witness leaves the stand to go to the exhibit board.)

[fol. 1310] The Court: Can you see that, Mr. Minicus?
Mr. Minicus: Yes, sir.
Mr. Farris: For the record, if the Court please, this is Defendant's Exhibit No. 15 which is an organizational chart.

By Mr. Farris:

Q. Mr. Fleming, I'll ask you what does that chart indicate?
A. This is an organizational chart of the Nashville Bank and Trust Company as of January the 1st, 1964, which was shortly before the agreement with the Hill Company to sell the controlling interest in the bank to the Weaver interests.
Q. Now who prepared the chart?
A. I prepared most of it, but received help from Charles W. Cook, assistant vice-president of our bank.
Q. I believe after the chart was originally drawn by you, you and Mr. Cook had a commercial artist do this big chart to bring into Court?
A. Yes, but I used as my base the chart which had been prepared by Mr. Hackworth and which I believe is Government Exhibit No. 25.

Mr. Minicus: I'm advised, Your Honor, that that chart is not in evidence as Government Exhibit.
Mr. Farris: It was given to us as Government Exhibit [fol. 1311] marked No. 25. That's just—he's just explaining the source of the material.

By Mr. Farris:

Q. you did get this from the records of the bank, Mr. Fleming?
A. Oh, yes.
Q. And the records prepared by Mr. Hackworth, I believe?
A. That's right.

Q. Now, Mr. Fleming, there's first one plastic overlay on this chart that contains the names on plastic of several individuals, and then there are other overlays, three in all. I'll ask you to explain what this chart will indicate as these overlays are turned back. What will the first plastic overlay indicate?

A. It would show that Mr. Young and Mr. Thomas and Mr. Haston are no longer with the bank.

Q. Before we turn that over, I'd ask you to comment and tell us, what does this chart indicate with respect to the ages of the people at the Nashville Bank and Trust Company?

Mr. Minicus: If Your Honor please, the chart states as of January 1, 1964, I think the witness should testify, if he's qualifying the chart, by ages that come after January [fol. 1312] 1, 1961, resignations that come after January 1, 1964.

The Court: Well, I think you can explain just what this chart is.

By Mr. Farris:

Q. What does the chart show? I believe it shows the ages as of that time, does it not?

A. As I understand your question, you want me to comment on the chart, is that right?

Q. That's correct.

A. This chart of course shows the ages of the respective individuals as of January the 1st, 1964. There are thirteen directors on this chart which of course is the governing body of the bank.

Under this thirteen, only four were under sixty-five, and two of those four, as of January the 1st, 1964, were sixty-three. There are four of the directors that were over seventy-five and three over eighty years old.

The executive committee, which also served as the trust committee, consisted of five extremely fine individuals, but only one of them, as of that date was under sixty-five years old. The others respectively were sixty-eight, sixty-eight, eighty-six, sixty-nine, and one was sixty-three.

The president of the bank who was not in good health was sixty-eight years old. There was six departments. The

[fol. 1313] heads of those departments were of the following ages as of two and a half years ago. One sixty-five, one sixty-five, one seventy-two, one fifty-nine, one fifty-nine, two have retired, and one has died.

Two other key men have resigned to accept positions in other places. These are only two left of the executive and trust committee. There are only four of the directors left, three having died since January 1, 1964.

Q. Now, Mr. Fleming, this first overlay, I believe, shows the names of Mr. F. D. Young, Mr. A. H. Thomas, and Mr. C. L. Haston, and I believe those three have either resigned or retired since the date of January 1, 1964, is that correct?

A. That's true, and also Mr. Primm has resigned since then.

[fol. 1314] Q. He is included in another situation. There is another overlay here, the second one that contains the names of six individuals: Mr. Hackworth, Dr. O. A. Oliver, Mr. R. H. Godwin, all directors. Then it shows Mr. Hackworth on the executive committee, and then again in the box for president. Then it lists Mr. Brush, a vice-president, who is head of the real estate department, and I believe all six of those positions have been vacated by the deaths of individuals who held those positions. Is that correct?

A. That's correct. I might just add one thing, too. There are two other very important men in the real estate department that resigned: Mr. Fred Weber, Jr., and George Volkert. They handled the sales end of the real estate department. They both resigned in order to go into business for themselves.

Q. I believe they were not officers?

A. They were not officers.

Q. And they were not listed, but they were important?

A. Very important to the real estate department.

Q. Now then, this next overlay lists three directors: Mr. H. T. Hill, Jr.; Mr. L. P. Thweatt, Mr. T. G. Hall. It lists two members of the executive committee—again Mr. Hill and Mr. Thweatt. Then it lists Mr. Hill again in the position of chairman of the board. Then it lists Mr. K. O. Primm, [fol. 1315] vice-president in the new business department.

I will ask you if those individuals have all resigned since the sale by Mr. Hill?

A. No, sir. They resigned prior to the transfer of stock ownership.

Mr. Minicus: I think it should be more definitely stated. He is not responsive to the attorney's question. The question asked about the sale of the stock. He said the transfer.

Mr. Farris: The facts would have been true in either case, I submit, since the sale of the stock or prior to the transfer of ownership.

The Court: He has already testified, in any case.

By Mr. Farris:

Q. So those individuals vacated a number of other offices. Now we are down here to the bottom of the chart and I will ask you if there are any other changes on this chart that are known to you that ought to be explained at this point.

A. Yes. Prior to the merger, Mr. Bevington, Mr. Hannon and Mr. Jakes severed their connection with the bank.

Q. So we will cover them up. Is there any other change on this chart?

A. The only other change is Mr. Overton Thompson, vice-president and trust officer, who had spent the greater [fol. 1316] portion of his time in the trust operations, was transferred over into the banking department to fill the very great need that was being established because of the imminent retirement of Mr. Young, the manager of that department.

Q. So, to show that, we would take Mr. Thompson out of trust and move him over here to the banking department?

A. That's correct.

Q. Outside of the people who were important to the trust department, aside from those listed there, what other individuals in the bank were important to the trust department in your opinion?

A. Of course Mr. Parker, Mr. Sory, Mr. Cheek and Mr. Brumfield were all very important; and I might say very capable individuals. Mr. Haston also was, though, and he resigned to accept a position with another institution.

Q. Were there any of the other executives of the bank important to the trust department?

A. Of course the trust committee was of the very greatest of importance. As a matter of fact, they had to give final approval to everything that went on in the trust department, including investments. They established policies. The manner in which the Nashville Bank and Trust operated, I think that they leaned very heavily upon the judgment and the experience of the five members of the trust committee, which also was the executive committee.

[fol. 1317] Q. Just to clear up a matter, I believe on some of the charts that committee is just described as the executive committee; but as a practical method of operation, it was also the trust committee. Is that correct?

A. It doubled as the trust committee.

Q. And I believe three out of five members of that committee are no longer connected with the institution?

A. One is deceased; the other two resigned before the ownership of stock was transferred.

Q. So then, with those three people on the trust committee and five members of the department, that makes a total of eight individuals, I believe. How many of those eight individuals are still connected with the trust department?

A. I believe it would be ten of them, wouldn't it? Five active officers and five directors, or rather, five on the trust committee.

Q. Yes, that's right.

A. Two of the operating officers are no longer connected with the trust department, and three of the five members of the trust committee are no longer connected.

Q. Mr. Fleming, in your opinion did the age of the directors and many of the key personnel present a problem for the Nashville Bank and Trust Company?

A. I think the answer to that is very obvious. Of course it did.

[fol. 1318] Q. Was that problem as apparent when Mr. Hill and Mr. Hackworth were there?

A. No. It was a problem that was beginning to build up. But as long as Mr. Hill and Mr. Hackworth were active in the management and ownership of the bank, their prestige, their contacts, were so great that I would say that there was no imminent crisis involved.

However, just as Oliver Wendell Holmes once said in a

learned opinion: "The question is not where you are today, but the direction in which you are going."

Certainly they were getting older every day.

Q. Would you care to come back over the other stand now at this point.

Mr. Farris: If the Court please, at this time I move that Defendant's Exhibit 15 be accepted in evidence, which is the management chart.

The Court: Do you have it in smaller form? Is this it?

Mr. Farris: Yes, sir.

The Court: Are there any objections?

Mr. Minicus: No objections, Your Honor.

The Court: Let it be admitted.

(Defendant Banks Exhibit No. 15 was received in evidence.)

[fol. 1319] By Mr. Farris:

Q. Mr. Fleming, do you have anything further to add in reply to my last question with respect to the problem of the Nashville Bank and Trust Company indicated by the age of many personnel there?

A. Well, I think that organization was somewhat like a baseball club, whose personnel was aging and had not been supported by younger ballplayers. Such a club's effective days must assuredly be numbered.

For instance, the New York Yankees got along fine for many years with pretty much the same personnel, but all of a sudden it became apparent that Mickey Mantle, Bobby Richardson, Whitey Ford, and others were no longer young and just could not perform as efficiently as in the past.

The problem is depending too long—or call it interdepending too long—on an organization. Several key people may become ill or something might happen to them pretty much at the same time.

For instance, we at Third National Bank, since the first of the year, have lost such people as Mr. Hackworth, Mr. Frank Gillette, and Judge William Wade.

Q. Mr. Fleming, would it have been difficult to have found replacements for so many key people in the Nashville Bank and Trust Company in such a short time?

A. A think it would have been next to impossible.

[fol. 1320] Q. How important to the success of a business is the chief executive officer?

A. Well, it has long been my opinion that a business succeeds or fails in direct proportion to the caliber of its head officials. As a rule, the organization is no better than the man or men who head it.

For instance, suppose Alfred E. Sloane had been with Packard Motors rather than with General Motors; Thomas J. Watson had been with Underwood Typewriter Company rather than IBM; or General Robert E. Wood had stayed with Montgomery-Ward rather than moved over to Sears, Roebuck.

Right here in Nashville, suppose Mr. Frank Jarman and Mr. Will Wemyss had stayed with the Carter Shoe Company rather than leave to organize their own company, which is now known as Genesco.

The same degree of importance is attached to the coach of a football team or to the manager of a baseball team. It is a lonely position where one is required to make the final decision. It is a very difficult one to fill, whether it be for a businessman, a jurist, a governor, or even president of the United States.

The Nashville Bank and Trust Company's problem was compounded because of the need to replace not only the chief executive officer, but half of their department managers and to bring in new directors as well as many other key people.

[fol. 1321] In fact, in my opinion it was necessary for the organization to be practically rebuilt in its entirety.

Q. Would it have been possible in your opinion to replace Mr. Hackworth?

A. I don't think any man is indispensable, and perhaps it would have been possible to replace Mr. Hackworth. But, as Mr. Primm stated in his testimony, he was as near to being indispensible as far as the Nashville Bank and Trust Company was concerned as anyone possibly could have been.

A man to fill his shoes would have to have been either a successful banker or certainly a successful businessman. He would have had to have been able to generate the con-

fidence of the bank's customers, both in the trust and in the banking field.

He would have had to have been able to gain and retain the cooperation of the staff and would have to have been able to motivate the staff—having in mind that there is nearly always some bit of antagonism on the part of a staff towards any outsider that is brought in.

He would have to be a salesman in order to try to keep the business that had been complimentary to Mr. Hackworth and to Mr. Hill; also to go out and get additional business. He would have to have had sufficient bank contacts around the country to have drawn on them to find replacements in the key spots that had to be filled.
[fol. 1322] Such a man undoubtedly would have been drawing a good salary, would have had the protection of a funded pension plan, and would have been pretty happy in his existing job. I think that he would have had to give a lot of consideration towards leaving such a lucrative position, such security, in order to come into a situation that had so many problems, and where he could not be assured of a funded pension.

A further problem was that the ownership of the bank was concentrated in the hands of a very few people, and we know from experience that it makes it more difficult in such a situation to bring in a topflight man because he is not quite sure whether he will be able to get along with the ownership of the bank. And, if he can't, he would then have to move on somewhere else.

Q. Are you and other banks of your acquaintance having difficult in obtaining sufficient experienced personnel to fill your key positions?

A. Well, we certainly are; and I would say that that is the principal topic of conversation today when heads of banks get together. Nearly all banks of any size follow the policy of recruiting each year from colleges and then assigning these recruits to a comprehensive training program.

We depend almost entirely upon young men that have, we think, officer potential, who form the college graduates.
[fol. 1323] This year, to illustrate the problem, sixty-seven percent of the graduating class at Vanderbilt University has expressed their intention to go on to graduate

school. A number of others are going into the armed forces, with the result that there are just not many to pick from, and there are a lot more banks trying to obtain the few that are available.

The problem of management has been accentuated, I think, in various decisions on mergers by the Comptroller of the Currency, by the FDIC, and by the Federal Reserve Board.

For instance, the Federal Reserve Board acting in its capacity as the governing regulatory agency, because the successor institution would be a state bank, has recently stressed the management problem in a great number of decisions.

I quote from a few of these. On October 7, 1964, the Federal Reserve Board approved the merger of the Second National Bank of Philadelphia, Pennsylvania, into the Provident Tradesmen Bank and Trust Company of Philadelphia. I quote from their decision:

"The Second National Bank is faced with a serious management succession problem. A bank of Second National's size and located as it is in a large metropolitan area would usually have no difficulty in coping with the problem of management succession.

[fol. 1324] "However, the problem faced by Second National is unusually difficult in that it must replace most of its key management group in the immediate future, including its chief executive, the next ranking officer, the third ranking officer, and the manager of its largest branch.

"In the context of relatively unimpressive earnings prospects, these circumstances lend support for approval. The management of Provident is capable and aggressive and consummation of the proposed merger would solve Second National's management problem."

I might add the Justice Department did not attack this merger. It went through.

On January 18, 1963, the Federal Reserve Board approved the Bank of Jamestown, New York, merger with the Clymer State Bank of Clymer, New York. I quote from their opinion—and I have, incidentally, a certified copy of all of these opinions, certified by the Secretary of the Federal Reserve Board at Washington.

"The effectuation of the proposal would replace Clymer Bank with a branch of Jamestown Bank and eliminate a moderate amount of competition between the former and the latter's branch at Sherman. Other sources of banking services, however, would remain reasonably accessible to persons in these two communities."

Mr. Minicus: If Your Honor please, I have been very [fol. 1325] patient with this long recitation concerning banks in other cities; but there is no establishment of the relevancy, the materiality, or the competency with regard to the City of Nashville.

The Court: Yes, it will have to be connected up with the local situation.

Mr. Farris: I will just move on to another question.

By Mr. Farris:

Q. Are you having any problems, Mr. Fleming, in filling clerical positions?

A. Yes, that's one of the greatest problems we have in the bank today. Unemployment, according to the February issue of the Bureau of Business and Economic Research, edited by the College of Business Administration of the University of Tennessee—unemployment in Nashville is now a little bit over two percent, which really means a state of over-employment.

We have all along depended upon graduates from high school to fill the vacancies in our clerical positions. The supply nearly always exceeded the demand.

For instance, four years ago at Easter-time when we normally interviewed those young men and young women who are to graduate that spring, we had so many applicants that we had to stagger interviews at ten-minute intervals [fol. 1326] for a full week. This year at the same time we had only seventeen applications, and only eight of those were of the caliber that we felt should be considered.

This is indeed a serious problem when you consider that we had over 150 turnover in our clerical staff last year.

Q. Mr. Fleming, how did the salaries and the fringe benefits of Nashville Bank and Trust Company compare with those of Third National Bank?

Mr. Minicus: Objection, Your Honor. I think there should be some connection between salaries and fringe benefits and competitive effect shown first.

The Court: Is it a comparison between these two banks that you are asking about now, between the salaries of the Third and what bank?

Mr. Farris: And Nashville Bank and Trust, the two banks.

The Court: Why isn't that relevant?

Mr. Minicus: There has been no foundation laid for any showing that a comparison of the salaries between the salaries paid at Nashville Bank and Trust Company and fringe benefits, and salaries paid at Third National Bank, would in any way affect customers coming in or going out of the bank, affect the acquisition of new business.

[fol. 1327] The Court: But we have to take the case step by step. It will have to be related, of course, before the case is completed.

Mr. Farris: I understand.

The Court: But I think for the present it is competent.

The Witness: What is the question, please?

By Mr. Farris:

Q. How did the salaries and fringe benefits of Nashville Bank and Trust Company compare with those of Third National Bank?

A. Those of the Nashville Bank and Trust were considerably lower than those of the Third National Bank. In fact, after the merger we increased salaries for the Nashville Bank and Trust staff by an average of 17.3 percent, and fringe benefits by an average of 64.5 percent.

The annual increase in salaries was $90,548,02; and of fringe benefits, $89,789.09. We also put into effect for the benefit of the Nashville Bank and Trust personnel a funded pension plan, past services of which will cost us $480,000, or on an amortized basis, $45,293.

Now, to be a little specific regarding some of the salaries, the department heads of the Nashville Bank and Trust on January 1, 1964, received salaries as follows:

One, a 65-year old man had had forty-four years' experi-[fol. 1328] ence, was being paid $11,697. Another, 75 years

old, who had eighteen years' experience, was being paid $10,560.90. Another, 72 years old that had had seven years' experience, was being paid $7,154.70. Another, 59 years old that had had forty-four years' experience, was receiving a salary of $10,788.75. Another, 66 years old that had been with the bank for forty-seven years, was receiving $13,059.90.

Another, 59 years old, that had been with the bank for thirty-seven years, was receiving $14,194.95.

We felt that all of these salaries and most of the others were definitely on the low side, and we took immediate steps to adjust them substantially upward.

[fol. 1329] Q. Mr. Fleming, I believe you are referring to a document and that document—

Mr. Farris: If the Court please, we would like to explain that because it shows names of individuals and their salaries, we think it should be filed under seal, and we—it is Defendant's Exhibit No. 44, and we ask that that exhibit, first I'll ask Mr. Fleming some further questions about it.

By Mr. Farris:

Q. Was this exhibit prepared under your direction and supervision?

A. Yes, it was from the records of the bank.

Q. And do you assume responsibility for its accuracy?

A. I assume responsibility for its accuracy.

Q. And it shows the age, length of service and salaries before and after of the individuals listed there?

A. It shows the salaries that the individuals listed were receiving on January the 1st, 1964, and the salaries that the same individuals are receiving as of April the 1st, 1966.

Mr. Farris: Now if the Court please, we offer this in evidence as Defendant's Exhibit No. 44.

The Court: All right, any objection?

Mr. Minicus: Objection to filing it under seal, Your [fol. 1330] Honor. There is only a single precedent in this case for any testimony coming into the record under seal.

The Court's have said time and time again that all matters pertaining to antitrust trials are a matter of great public interest. This has even been taken notice of to the

extent that depositions are ordered by statute to be open to the public upon taking in antitrust cases.

The reason why the government moved and acquiesced for a closed hearing on a previous occasion in this case was because we considered that there was a countervailing and probably overriding public interest involved on that occasion.

On the present occasion, there are only personal interests involved whereas we consider personal interests important, they cannot be said to be overriding to the public interest involved in full dissemination of the news in antitrust cases.

Therefore, I strongly urge that the motion to seal this testimony be overruled.

The Court: In the other instance, as I recall it, you moved for a closed hearing yourself, and the defendants and the intervenor acquiesced in it, agreed to it.

[fol. 1331] Mr. Minicus: That is correct, Your Honor.

The Court: And that was on the representation made to me that matters of a confidential nature would be developed during the course of the hearing, a disclosure of which would be highly detrimental to the bank.

Mr. Minicus: The same information was made available to me, and I relied on it in making the motion.

As a matter of fact, on the basis of the motion—of the evidence which was disclosed on that occasion, I now move that the testimony be taken out from under seal.

The Court: Well, any objection?

Now will there be any request from this side for any sealed hearings or closed hearings?

Mr. Farris: Yes, sir.

Mr. O'Malley: Yes, Your Honor.

Mr. Farris: There is an agreement, I believe, among all counsel that certain FDIC reports will be introduced in camera, and kept under seal.

Mr. Minicus: They enjoy again executive privilege, and a very strong public interest is involved there.

The Court: Of course, in this hearing the other day, as [fol. 1332] I say, it was represented to me that this was confidential nature and would be detrimental to the defendant, and I can only observe from the statements made in the press that after I acquiesced in this on the repre-

sentations that had been made to me in open Court, that both counsel and the witness himself were quoted in the paper as having said that it was unnecessary.

Mr. Minicus: Counsel was not quoted, Your Honor. I most certainly——

The Court: I think so.

Mr. Minicus: Then we were misquoted, because we had no comment on it at all, Your Honor. I have read the papers, and I couldn't—

The Court: The disclosure could have been an open hearing.

Mr. Minimus: The witness said that, but I have seen no reference, Your Honor, to counsel ever having made such a representation, and I assure you if anybody has, including myself, we are subject to severe reprimand. That statement was never made.

The Court: I'm not saying the statement was made; I'm saying what I read in the paper.

Mr. Minicus: I did not see it attributed to counsel in the paper, Your Honor. I did see it attributed to the witness, [fol. 1333] and that is one thing that has brought on my motion to unseal the matter this morning.

If the papers said that, and I did not see it, then the papers misrepresented us.

The Court: That's a matter that can be checked, but on these sealed hearings I will not have anything under seal first unless I think it is necessary, in the public interest to have it under seal, and secondly unless both sides agree to it. If any side objects why it will be disclosed.

Mr. O'Malley: If the Court please—

The Court: This is a civil trial, and I think if both sides agree there would be no error involved in any ruling I would make in that respect, but where one side objects, that opens up the possibility of an unnecessary error if I ruled the other way, and I don't think it's advisable, in a case of this protracted nature, to have a possible error of this type in the record.

Mr. Farris: If the Court please, my only observation would be I don't think the question of individual—certain individuals' salaries is of any—who those individuals are is not so much of legal consequence as it is the fact that it [fol. 1334] shows generally that the salaries of Nashville

Bank and Trust Company were so low that it would have been unable to obtain competent personnel without a complete revision of the whole salary structure.

It would tend to show that low salaries tend to bring about a quality of management that is not as capable as they might have been with larger salaries. It would tend to show now that with increased salaries in effect——

The Court: I'm very conscious of the relevancy of the testimony. You don't have to convince me on that proposition, but I don't see any reason why this should not be disclosed inasmuch as the public interest is concerned.

Mr. Minicus: May I submit to Your Honor in that regard that the government has already put in evidence which clearly discloses that the salaries of Nashville Bank and Trust Company were substantially lower than those at Third National Bank and First American. It's in the record, so I don't think that this is in the record.

The Court: You can withdraw that and identify them by numbers if you care to and positions rather than naming individuals. That would be satisfactory as far as I'm concerned.

[fol. 1335] Mr. Farris: If the Court would permit that, I would like to do that just withdraw that exhibit and we'll submit it at a later date, and we will show it only by number instead of by listing the names of the individuals.

The Court: That will be satisfactory.

Mr. Minicus: May I now reiterate my motion—

The Court: Do you have any objection to that?

Mr. Minicus: No, sir.

May I reiterate my motion, Your Honor, that the testimony of Mr. Yearwood be withdrawn from seal in light of the witnesss——

The Court: Since everybody seems to think that it was not necessary to have a closed hearing and the witness himself is quoted as having said that everybody in Nashville could know it, I see no reason not to grant the motion.

Mr. Farris: I don't object to that at all.

The Court: Let the motion be grated.

Mr. Minicus: Thank you, Your Honor.

By Mr. Farris:

Q. Now, Mr. Fleming, other than the age of personnel involved, were there other apparent weaknesses in the structure of the Nashville Bank and Trust Company?

A. Yes, I think there were quite a few. First they only [fol. 1336] had two banking offices in a city that had fifty-three offices. The traffic situation made this a very aggravating problem.

They had not taken the first step toward automation.

Their office building needed extensive repairs and modernization.

They had no credit department and a very inadequate auditing department.

Their earnings were not adequate to support the needs of the bank.

They were extremely shallow in management depth and had made no plans for the replacement of their chief officer who was going on sixty-nine years old and was in poor health.

Q. Did the Third National Bank compete with the Nashville Bank and Trust Company prior to the merger?

A. Yes, I think all banks located in the same city to a certain extent compete with one another. However, I did not consider that our competition with the Nashville Bank and Trust or theirs with us was either significant or substantial. To me it is just not the rule of reason to believe that a bank would compete substantially with one of its good customers such as the Nashville Bank and Trust Company was of ours and of the other two large banks in [fol. 1337] Nashville. In fact, on numerous occasions, we helped the Nashville Bank and Trust to obtain business, it being our objective to gain their good will to the fullest extent possible so that they in turn would do just as much business as they could with us.

Q. Mr. Fleming, why, in your opinion, do people maintain accounts in more than one bank?

A. Well, an individual or business usually picks out one bank with which to transact its principal business. However, for various and sundry reasons, he might want to carry a second account which is perhaps of an inactive or complimentary type, one illustration would be where a com-

pany would carry its main account with one bank and a payroll account with another or perhaps place a special contingency fund with a second bank, but usually you will find an individual or a company to select one bank as their principal depository and then whatever other banks they do business with is of a collateral nature of a different type than the primary relationship.

Q. How do you account for the progress that was made by Nashville Bank and Trust Company between 1955 and 1964?

A. Well, to understand the situation between 1955 and 1964, I think you have to go back to the early history of the Nashville Bank and Trust Company. It was organized in [fol. 1338] 1889, and operated strictly as a very small trust institution until 1901 when it first accepted both checking and savings accounts.

It is my understanding that in those earlier years, this bank operated more as a savings type institution specializing in real estate loans than they did in a full service commercial bank.

As a result of this concentration in real estate loans, they had a lot of foreclosures in the late twenties and early thirties. Then when the American Bank sold the Nashville Bank and Trust to the H. G. Hill Company, the next ten or twelve years were spent in selling off real estate in getting the house in order, and in concentrating more on liquidity than it was on growth.

Now then, in 1946, the bank had a great blow when its president, Mr. Charles Nelson, died suddenly in the prime of his life. The next ten years were filled—were a period where the successive management to Mr. Nelson were older men who were looking back more toward the depression years they were forward to the great opportunities which our growing economy offered.

The whole picture changed in 1956 when Mr. Hill was able to get Mr. W. S. Hackworth to assume the presidency of the Nashville Bank and Trust. Mr. Hackworth had, for many years, been president of the Nashville, Chattanooga [fol. 1339] and St. Louis Railroad, was a former chairman of the Nashville Chamber of Commerce, was highly regarded, was very definitely a leader in civic, religious and business affairs in Nashville. He lost no time in utilizing

the extensive connections which he had and which the Hill interest had in developing the bank to its full potential.

He moved Mr. Primm, a young man in the trust operations, into the business development department to spearhead this business solicitation. They were very successful and moved forward very rapidly up until 1960, but at that time, they seemed to reach a plateau.

Mr. Hackworth said in his deposition, he said it was like a man going in the life insurance business. He first sells all of his relatives and his friends, but after he's pretty well used them all up, then the going gets a lot tougher, and he found that to be the case with the Nashville Bank and Trust Company.

The fact was that the officer personnel just was not young enough or in sufficient depth to maintain for long the momentum which had been generated by Mr. Hackworth.

After 1960, it grew at a much slower pace. One of the reasons again, in keeping with Mr. Hackworth's deposition, was they did not have modern facilities, they did not have branches, and they did not have automation, and the things that were so important in supporting the growth of a bank. [fol. 1340] In fact, the percentage of the overall banking business in Nashville which the Nashville Bank and Trust had on June 30, 1964, was 4.83 per cent which was nearly a full one per cent below the 5.72 per cent overall percentage of the banking business in Nashville, which they had on June the 30th, 1960.

Q. Mr. Fleming, will you compare the competition today between the Nashville banks with the competition which existed prior to the merger? Do you believe competition has been diminished?

A. On the contrary, I think it has refinitely been increased.

Q. Do you notice any increased activity on the part of other banks in the city since the merger?

A. Well, of course, when it was announced that Mr.— that we had the intent to merge between the Third National and the Nashville Bank and Trust, the two larger banks, First American and the Commerce Union Bank accelerated their efforts to obtain business from the Nashville Bank and Trust.

In fact, Mr. Primm was pretty much full time on it as

far as I could see. Mr. Hackworth said they sent out teams of solicitors and we found very definitely that nearly all of the important accounts of the Nashville Bank and Trust [fol. 1341] were being called on by representatives of these other banks.

To combat that, Mr. Hackworth and I spent many days going around and calling on these people to try to retain their business. Things were pretty rough there for the four or five months pending the decision of the Comptroller in the matter. We did the best we could, but it was a losing fight.

Just as soon as the merger was approved, we accelerated our efforts, not only to retain the business, but to try to get back some of it that we had lost, and also to make—to be just as competitive as we could with the other two large banks. However, during all of this period, the smaller banks seem to have been prospering and growing faster than they ever had before.

Q. Mr. Fleming, in your opinion, what are the—by what criteria is a bank judged?

A. You mean by the public?

Q. By the public.

A. First safety and strength, to furnish protection to the depositors.

I think second, the caliber of the management, reputation of the directors.

Third, service to the community.

Fourth, efficiency of operations.

[fol. 1342] Fifth, convenience and attractiveness of quarters and facilities.

Sixth, the manner in which the public is treated.

Seventh, I would say the extent to which the staff exerts leadership in civic, religious and business affairs.

[fol. 1343] Eighth, the profitability of the operations.

I would say in general that they would be primary criteria by which a bank's image is considered in the eyes of the public.

Q. Was the advertising of Third National Bank and the Nashville Bank and Trust Company in your opinion designed for the purpose of attracting new customers away from another bank?

A. There is a misconception on the part of many people

that commercial banks' advertising is directed primarily towards trying to take business away from another commercial bank.

In fact, banks representing eighty percent of the total deposits of the United States today support an organization known as the Foundation For Commercial Banks. This has an annual budget of about $1,500,000, and is supported by the three largest banks in Nashville.

The purpose of this Foundation is to call to the attention of the public the services that can be obtained from a commercial bank as contrasted with the savings and loan associations or the credit unions which are recognized by bankers as being the principal competitors for the savings dollar, or with small loan companies who are constantly trying to take away from the commercial banks their potential loan customers, or the large finance companies, [fol. 1344] which really dominate to a certain extent the automobile financing field—companies like General Motors Acceptance, C.I.T., Commercial Credit, or Ford Credit Corporation.

The advertising that the National Foundation is doing on the national level—television and magazines—is in no way directed to banks trying to compete with one another. It is directed towards trying to build up in the eyes of the public the commercial banking system as against the many sources of competition we are receiving outside of banking circles.

Mr. McKenna: I would like to enter an objection at this time to all testimony directed at showing the competition between banks and other institutions. We feel that this goes directly to the line of commerce.

The line of commerce in this case is a matter of law. It is that set out in the Philadelphia bank case, namely, commercial banking.

This testimony is totally incompetent, and we feel should not come into the record.

The Court: All right, that may be a matter of law, but we have to have some facts first.

Mr. McKenna: Your Honor, I think we have pretty well demonstrated in our case the facts that go to proving the commercial national banking line of commerce. I don't see [fol. 1345] what non-relevant facts have to bear on this.

The Court: You have a witness who said that the commercial national banking is the line of commerce that ought to be considered.

Mr. McKenna: No, sir, that isn't what I mean.

What I mean is, the direction of proof, the evidence we have introduced here, goes to that line of commercial national banking.

It is true that the Court, in its equity power, at the end of this case may find that the defendants have also substantially lessened competition in other lines of commerce. But all that the Government is urging at this point is that the line of commerce involved in this case as a matter of law is commercial banking.

This testimony we feel is not relevant to that, and it is incompetent.

The Court: You may be right on that as a matter of law, that commercial banking is the line of commerce to be considered; but I can't determine that issue now. We have this problem that the 1966 Amendment omitted the words "any line of commerce." That's not found in the Act.

Mr. McKenna: That's right, sir.

[fol. 1346] The Court: And the defendants argue that the significance of that is that competition with other financial institutions is to be taken into account. But I can't foreclose the defendants from offering proof on that point unless I am willing to decide the case on the merits right now.

Mr. McKenna: I don't think it need to be decided on the merits right now. I think it is only on this one facet.

Your Honor, we would like, with the Court's permission, to submit a brief on this point.

The Court: I don't have time to read a brief now. I have to rule on this right now to get the evidence in. I think it is competent.

Of course the issue involved—whether or not competition with other financial institutions, credit unions and savings and loan associations—whether or not that is to be taken into account is something I would have to pass on.

But I first must have the record developed to see what the facts are.

Mr. McKenna: Thank you, sir.

Mr. Farris: I appreciate the Court's ruling. I wonder if the Court would have me just for one minute respond to

this argument? I think at this time it would help the record [fol. 1347] to get a few comments in.

The Court: It may help the record, but it won't help me. I am interested in time.

The Witness: May I continue?

The Court: Yes, sir, go ahead.

The Witness: In respect to our advertising at the local level, you notice the billboards, newspaper advertisements by nearly all the commercial banks; we put "Full Service Bank"—you will find a little circle of stars. What we are advertising is the advantages of doing business with a commercial bank as against using other sources of credit, savings media, and so forth.

I would estimate that at least 75 percent of our advertising locally, and all of the Foundation of Commercial Banks' nationally, is of an institutional type. Very seldom do you see a bank trying to sell any particular one thing. Occasionally we will say, "Come in for housing loans," or we might say, "Come in for a special type savings service.

But usually we are trying to develop the image of the bank through general type institutional advertising.

By Mr. Farris:

Q. Mr. Fleming, in your opinion how has the merger benefitted the convenience and needs of the community? [fol. 1348] A. Well, I would have to give you a rather lengthy answer on that. First, the legal lending limit to one customer has been increased by twenty percent, to an amount of $2,400,000, enabling us to furnish more credit to companies which in turn will be able to provide jobs and employment for the people of this area.

Second, seventeen banking offices are now available to the Nashville Bank and Trust Company, where only two were available before the merger.

Three, the Nashville Bank and Trust building on Union Street has been remodeled and made more attractive and servicable for the employees and for the public.

Fourth, the Nashville Bank and Trust has received the benefits of membership in the Federal Reserve System.

Fifth, a fully automated operated, including two computers, have been made available to the customers of the Nashville Bank and Trust Company.

Sixth, a funded pension plan, larger salaries, more generous fringe benefits and better working conditions, are made available to the Nashville Bank and Trust Company personnel and to their families.

Seventh, greater research facilities, better expertise in trust operations and management in depth have been made [fol. 1349] available to the trust accounts handled by Nashville Bank and Trust.

Eighth, larger capital, surplus, and reserve basis, plus more stable and substantial earnings give better protection to Nashville Bank and Trust depositors and serve as a base to support further expansion.

Ninth, a well-developed recruiting and trainee program gives assurance that replacements will be available in all echelons of management.

Tenth, a small business affiliate chartered under the Federal Small Business Act—I might add, the first in Tennessee—gives added assistance to the small business customers of Nashville Bank and Trust.

Eleventh, special checking accounts, and a wide assortment of savings plans, provide additional conveniences for the public.

Twelfth, a new 20-story office building, combination office-bank building, now under construction, will provide to the public the most modern and convenient office and banking facilities in this area.

Thirteenth, an experienced and extensive credit department will permit more intelligent handling of loan applications and will guard against undue credit losses.

Fourteenth, an efficient auditing department will assure better internal operations and give better protection [fol. 1350] against defalcations.

Fifteenth, an extensive correspondent banking system covering a wide area of the Central South will provide customers of Nashville Bank and Trust with needed contacts. Also, the extensive connections of Third National Bank and its officers will be of valuable assistance to the Nashville Bank and Trust on a national basis.

Sixteenth, the extensive management and operating problems of Nashville Bank and Trust have been solved in their entirety.

Q. Mr. Fleming, what in your opinion were the principal

differences in the types of services offered by Third National Bank and Nashville Bank and Trust?

A. The Nashville Bank and Trust primarily confined its operations to the local area. Third National Bank was a local and regional bank, obtaining a great deal of its business from correspondent banks, large corporations, and businesses directed to them through their correspondent system.

As a result, there was a considerable difference in the type services offered. For instance, Nashville Bank and Trust operated a real estate department which included the rental of houses, and they served also as an agent in the sale of all types of real estate.

Two, real estate loans composed thirty-five percent of the total loans of the Nashville Bank and Trust at the end [fol. 1351] of 1963, and the average over a ten-year period of real estate loans to the total was forty-three percent. Forty-five percent of the deposits of the Nashville Bank and Trust were in the savings category.

A travel agency was located in the main lobby of the Nashville Bank and Trust. Nashville Bank and Trust was not a member of the Federal Reserve System and had to look to other banks to clear its out-of-town checks. On the other hand, Third National Bank offers services that are now available to the Nashville Bank and Trust customers—special checking accounts, fully automated services, including personalized checks with magnetic ink which are furnished free to the individual customers; an extensive consumer finance department operating in twenty-eight counties; fifteen banking offices, all of which provide lockboxes for the use of its customers; multiple savings plans, including five-year certificates, discount savings and automatic savings programs; a lockbox plan which is very popular for the use of out-of-town corporations.

An extensive correspondent banking system involving over 375 banks; an in-plant loan service which permitted loans to be made on the premises of industrial plants: a small business company which chartered under Federal legislation permits banks to be of assistance to small companies in a way that would not be permitted under existing [fol. 1352] regulations of the national banking system.

Ten, the Third National Bank operated strictly a com-

mercial type bank with less than one percent of its loans in mortgages. They are the essential differences as I see it.

Q. Mr. Fleming, if you had been Mr. Weaver, faced with the problems that he had, what would you have done with the stock of the National Bank and Trust Company?

Mr. Minicus: Objection, Your Honor.
The Court: Sustained.

By Mr. Farris:

Q. Mr. Fleming, from what source do you obtain your principal trust business?
A. From our customers.
Q. Is that where your main solicitation is directed?
A. Yes, It is obvious that we know them best, and therefore we have a better entree to them.
Q. To what extent do banks compete among themselves for trust business?
A. To a very small extent.

Mr. Minicus: Objection.
The Court: What banks compete?
Mr. Minicus: It calls for more than one bank rather than this bank, and it calls for a conclusion as to the nature of [fol. 1353] competition on the witness's part. I think it should be detailed what he means—
The Court: You are not breaking it down to what banks you are talking about.

By Mr. Farris:

Q. I will say from your experience and observation of the banking market in Nashville, Tennessee, to what extent do the banks located in this market compete for trust business?
A. Among themselves?
Q. Yes, sir.
A. I would say to a very small extent. If an individual is handling his commercial banking needs with a particular institution, if that institution is qualified it is only natural that he would name the bank as his executor if he intends to use a bank.

It isn't reasonable that he would go out and name another

institution with whom he had no contact. Our principal competition for executorships, administratorships, is with the lawyers; and our principal competition for pension plans is with insurance companies.

Mr. Minicus: I object to that answer and ask that it be stricken, Your Honor. The witness constantly referred to what was reasonable and unreasonable, without any basic facts upon which to predicate the conclusion of reasonableness.

[fol. 1354] The Court: I think I understand what he means by that. Having a contact or a relationship with a bank, he wouldn't be expected to seek out another bank to name as trustee.

Mr. Minicus: I don't see why not; I think it is possible——

The Court: That is his opinion. I admit it for that purpose.

Mr. Minicus: Yes, sir.

By Mr. Farris:

Q. Mr. Fleming, what are the principal sources of income in a trust department operation?

A. By far and away the most lucrative source of income is serving as either executor or administrator of an estate.

Q. What was the size in assets, income, and personnel of the two trust departments—the trust department of Nashville Bank and Trust Company, and the trust department of the Third National Bank?

A. Let me see if I understand it. The size and assets, income, and personnel of the Third National Bank and Nashville Bank and Trust at what date?

Q. In 1963.

A. At the close of 1963, or rather, for the year 1963, the income of Third National Bank's trust department was [fol. 1355] $331,000, or roughly two and a half percent of its total income. In the same year, Nashville Bank and Trust's trust department income was $265,000, or roughly 11.5 percent of the bank's total income.

Third National Bank had twenty-seven officers and employees in the trust operation out of total employees of 549, or 4.9 percent of the total. Nashville Bank and Trust

had twenty-four employees in the trust department out of total employees of 134, or 17.9 percent of the total.

The book value at the end of 1963 of Nashville Bank and Trust's trust assets were $81,362,203; and of Third National Bank, $83,169,706.

In other words, in 1963—I am getting a little bit ahead of myself in answering your question there.

I would like to point this out about the book value of these assets. I don't think that that is the basic criteria on the size of a trust department. My reasoning on that is this. We have in our bank and other banks, I feel, the same type business. We have large agency accounts which involve nothing in the world except our holding securities, collecting dividends, and passing them on to the beneficiaries.

That agency might involve many millions of dollars in book value of the stock we are holding, but so far as the responsibility of handling the account and so far as the income from the account, it is practically nil.

[fol. 1356] Q. By an agency account, do you mean one where someone outside the bank directs the investments? Is that correct?

A. That's right.

Q. The customer directs the investment.

A. To finish your question, though, in regard to earnings, I mentioned only the gross income. But the net income of Third National Bank in 1963 from their trust department, before income taxes—that is, gross income, less operating expenses—was $28,134, or .58 percent of our earnings that year, less than half of one percent.

At Nashville Bank and Trust Company, it was $50,976—only 7.15 percent of their earnings before income taxes.

Q. Now, Mr. Fleming, a witness here earlier—Professor Wolf—on both direct testimony and on cross-examination, stated that the essential purpose of the bank was to operate to make a profit, or words to that effect.

Do you agree with that statement?

A. Emphatically no.

Q. What obligation, then, do you feel a commercial bank owes to the public?

A. Of course the bank is the same as any other business enterprise. It is in business to make money. But so far as a bank's concern, its obligation to the public transcends in

[fol. 1357] importance that of a regular commercial operation. In fact, if making money was the only objective of a bank, all we would have to do is to take all of our deposits, invest them in municipal bonds, collect the tax-free income, and show a very handsome return to the stockholders.

But, if we did that, the public would very definitely suffer.

Where would the money then be available to finance the purchase of cars, homes, pay for tuition for children, or to run businesses of all kinds? Specifically, I think a bank has a responsibility first to maintain a safe, sound and liquid institution where people in all walks of life can transact their banking business and deposit their money in checking or savings accounts.

It must meet the legitimate borrowing needs of individuals, partnerships, and corporations. This means that it must have available both in bad and good times sufficient funds to care for the needs of its customers, including, so far as we are concerned, those located in the trade area of Southern Kentucky, Northern Alabama, and Tennessee, as well as Davidson County.

If you show me a community or a city where, because of over-conservatism, disinterest, or any other reason, including undue emphasis on the profit motive, a bank fails to support the economy with adequate loans, I will show you a city that is standing still and not making progress.

[fol. 1358] The obligation to operate a bank on a profitable basis in order to build up capital and provide for expansion needs is important. However, the desire to make money should not be at the expense of maintaing adequate liquidity, since it is absolutely important for a bank at all times to guard against any contingencies.

[fol. 1359] Any other objective or policy could well result in a situation such as prevailed in depression years when so many banks failed because of a frozen or non liquid condition.

The staff of a bank must be able and willing to take a leadership and part in all community affairs including service on the boards of churches, business organizations and business enterprises.

It is the obligation of the bank and of its personnel to

help build the community which it serves and this means taking a leadership part in every worthwhile activity of the community. The bank must create and maintain a good image and its official staff must conduct themselves in such a manner as to deserve and justify the confidence of the public.

The people will not deposit their money with a bank unless they have confidence in its soundness and policies and if such deposits are not available, loans could not be made to develop the economy.

In short, in my opinion, the community is the bank and the bank is the community. The profit motive of course is important, but must be subordinated to the public interest.

Q. Mr. Fleming, what percentage of the estates in Davidson County are handled by the banks?

[fol. 1360] A. Well, according to the records of the Probate Court for Davidson County, as indicated by Defendant's Exhibits 16, 17, and 18, in the calendar year of 1963, 528 wills naming an executor were probated. There were 343 interstate qualifying in addition making a total of 871. Of these 871, 69 banks in Davidson County served or a total handled only 7.9 per cent of the total volume.

The Third National Bank in that year received 28 appointments; the Nashville Bank and Trust fourteen; the First American 41; the Commerce Union, ten, and others seven.

In 1964, the record was 971 probates, 621 executorships, and 351 interstate. Banks served in 97 cases or 9.98 per cent.

Third National Bank received 24 appointments; Nashville Bank and Trust 25; American 21; and Commerce Union seven.

In 1965, the number of probates was 984, 614 being executorships, and 370 interstate. The combined Third National Bank and Nashville Bank and Trust received 38; the First American 33, the Commerce Union 9, and the White's Creek and Citizens Bank, one. I'm not sure which of the two received the one. Making a total of 81 or 8.2 per cent.

The Court: Take a short recess.

* * * * * * *

(Whereupon a short recess was taken, after which the [fol. 1361] following further proceedings were had.)

* * * * * * *

Mr. Farris: If the Court please, I think in ten more minutes, we hope to finish with this witness.

By Mr. Farris:

Q. Mr. Fleming, why, in your opinion, do the banks receive such a small percentage of the probate business in Davidson County?

A. Well, the banks got into the trust business rather late, and still have not been able to make much inroads on the long existing custom where attorneys are active as executors or administrators, or members of families assisted by their attorneys.

What we are trying to do in the banking business is to persuade the 580 members of the Nashville Bar that trust departments of banks, working in close conjunction with attorneys, can perform a real vital and needed service in this community.

Q. Mr. Fleming, does the Federal Reserve Board allow capital notes to be included as part of the capital and surplus in setting the legal limit of one customer?

A. The Federal Reserve Board does not permit capital notes to be so included, and stipulates that the maximum loan permitted by a national bank to one customer is ten [fol. 1362] per cent of capital and surplus exclusive of capital notes.

Q. Mr. Fleming, is there any large percentage of stock in the Third National Bank held by one stockholder?

A. We now have some eighteen hundred stockholders. No single stockholder has as much as three per cent of the bank's outstanding stock.

Q. Have you anything further to add?

A. Yes, the application for permission to merge was filed after very thorough consideration of the precedent which we considered to have been established in the Houston, Birmingham, Alabama, and Philadelphia cases. These merger cases were of a horizontal nature, involved banks

that were to a certain extent competitive one with the other, and were very similar, we thought to our case.

A great deal of time was expended by a large number of people in preparing a 187 page application. The Boards of Directors of both banks, unanimously approved the merger. It was ratified without one single dissenting vote by the stockholders, and as far as I know, there hasn't been one single complaint from anyone in this community or area against the merger.

The Comptroller of the Currency, in a very strong opinion, approved the merger. The Superintendent of Banks in Tennessee stated in a letter, which is part of our applica- [fol. 1363] tion——

Mr. Minicus: Objection, Your Honor.

The Court: What grounds.

Mr. Minicus: It's hearsay. I think the Superintendent of State of Tennessee should testify on this point.

The Court: Well, he's merely referring to this as a basis for his opinion, I think.

Mr. Minicus: We do, however, object to the substance of whatever the state Superintendent of Banking said being accepted as the fact.

The Court: Substantive evidence, yes. I think to that extent I'll sustain the objection, but he may refer to it as a basis for his conclusions.

The Witness: May I continue?

The Court: Yes.

The Witness: The Superintendent of Banks of Tennessee stated in a letter which is part of the application that we filed with the Comptroller of the Currency that in his opinion there would not be a lessening of competition because of the merger.

The pattern of banking as existed before the merger has not been changed since. The First American National Bank was the largest bank then and still is the largest bank, and the spread of deposits in their favor is much [fol. 1364] larger today than it was at the time of the merger.

The Nashville Bank and Trust Building on Union Street has been remodeled, and we think made much more attractive.

Salaries have been substantially increased for the employees, fringe benefits have been enlarged, a funded pension plan established, and better bonuses and more generous vacations made available to the staff of Nashville Bank and Trust.

Customers have benefitted through automation, the use of a computer, and extensive branch system, better auditing, more capable credit department which permits more intelligent handling of loan requests.

Management at all echelons is available in depth, and the addition of thirty-five business, civic and religious leaders have been added to the Boards of Directors.

It is my considered judgment that competition has not been significantly lessened, and actually has been increased. No one in this area is denied ample and competitive sources where loans can be obtained, and deposits made in either savings or checking accounts. All of the many services offered by full service commercial banks [fol. 1365] are made available at fifty-three locations which blanket the county.

The management and banking problems of Nashville Bank and Trust have been resolved. The morale of the staff is high, and the public interest, I feel, has been well served by the merger.

By Mr. Farris:

Q. Mr. Fleming, when you referred to a Philadelphia case in the first sentence of your comment, you were not referring to the Philadelphia National Bank Case?

A. I was referring to the Second National Bank and the Provident Tradesmen Bank which was merged in 1963.

Mr. Farris: Thank you. That's all.

Cross-examination.

By Mr. Minicus:

Q. With regard to those mergers, did you say you considered as precedents justifying the merger that you were engaged in, were any of them litigated?

A. I don't know. My answer and opinion was that we felt the fact that the Justice Department did not attack

a single one of these mergers was establishing a precedent of what they might do in a similar type case.

We felt that our merger case corresponded almost identically with at least two of those three cases.

Q. Do you think non activity by a governmental agency [fol. 1366] is the same thing as approval?

A. I don't think it is the same thing as approval, but I guess that I might not understand the ways of government, but I still can't understand, within the same year, why a merger in Houston, Texas, and one in Birmingham, Alabama, was allowed to go through, and one in Nashville was attacked when it involved a much smaller per cent of increase in deposits.

Q. Do you have any idea of the number of cases and investigations that are engaged in by the antitrust division each year?

A. From all indications, it must be an awful lot.

Q. Do you know the number?

A. I haven't the slightest idea.

Q. Do you know, Mr. Fleming, how many employees capable of conducting such investigations and trials are employed by the antitrust division of the Department of Justice?

A. I do not.

Q. Would you consider non action by the local police department in connection with a crime of violence to be justification for somebody else going out and committing that crime?

A. I would not.

Mr. Farris: If Your Honor please, I move that that question be stricken, because he's talking about crime, and [fol. 1367] it's completely uncalled for in this case.

Mr. Minicus: I submit on this, Your Honor, that Section I of the Sherman Act is a criminal statute, and that Section 1 of the Sherman Act is involved here.

Mr. Farris: If the Court please—

The Court: The witness has already answered.

Mr. Farris: Yes, sir, but I move that all comment about a criminal statute be stricken, because there has been no charge made, and it is an absolute insult to bring that in.

Mr. Minicus: Although the case is brought under Section 4 and even in criminal cases.—

The Court: When you referred to the analogy of the commission of the crime, which was not prosecuted, I thought you were merely referring to that, not because it was a crime, but because it illustrated non action on the part of the government.

Mr. Minicus: That was my purpose.

The Court: That's the way I took it. I didn't take any insinuation that there had been a crime committed.

Mr. Minicus: And there was none offered, sir.

By Mr. Minicus:

Q. Mr. Fleming, I show you Government Exhibit 474, which I understand defense counsel have a copy of, which [fol. 1368] was described as a handwritten note from the desk of William C. Weaver, Jr., bearing what purports to be your initials. Are they your initials, sir?

A. They are.

Q. Thank you, sir.

Will you tell us the date of that communication—of that note?

A. February the 22nd.

Q. What year?

A. 1964. It's not dated on there, but I'm sure it's 1964.

Q. Thank you, sir.

A. Yes, sir.

Q. Now, according to the purport of this note, on February 22, 1964, you and Mr. Weaver were then discussing and reaching certain tentative agreements concerned with Mr. Weaver's transfer of the stock to Third National Bank. That is the Nashville Bank and Trust Company stock to Third National Bank.

What right did Mr. Weaver have on February 22, 1964, to engage in the negotiation of a transfer of this stock?

A. Well, my recollection is that he didn't engage in it. All that memorandum was was one that I wrote down at his home when I had breakfast with him of what I would [fol. 1369] like for him to consider, but he did not indicate that he was at all interested in considering that.

Q. Why did you address Mr. Weaver with these propositions? Did he have the right, if he agreed with you, to transfer that stock?

A. I don't know whether he had the right or not, but

any agreement that we had ever made together was subject to the approval of his associates and also the approval of Mr. Hackworth and Mr. Hill.

[fol. 1370] Q. Had there been public announcement at that time that Mr. Hill had agreed to sell the stock to Mr. Weaver?

A. There had been publication that the Hill Company had agreed to, but not Mr. ~~Hill~~.

Q. So that the sale of the Hill Company stock at that time was public knowledge?

A. Yes, I would say to the extent that it had been publicized in the newspapers.

Q. I invite your attention, Mr. Fleming, to Defendant's Exhibit 15.

A. Could I come over there where I can see it?

Q. Certainly, by all means.

A. Thank you. May I stand here?

The Court: You may stand there.

The Witness: Thank you.

By Mr. Minicus:

Q. Will you indicate on this chart the number of people who had left, who were deceased, or resigned or for any other reason left Nashville Bank and Trust Company prior to December 22, 1964?

A. Prior to December——

Q. February 22, 1964.

A. Prior to February 22? Well, I have got to speak a little from memory here, but this is the best of my recollection that Mr. Hill, Thweatt, and Hall had resigned. That [fol. 1371] Mr. Primm had resigned. I believe they were the only three.

Q. Did Mr. Primm make known his knowledge of the sale of the Hill Company stock prior to his resignation?

A. I don't know.

Q. Were you in court when Mr. Primm testified, Mr. Fleming?

A. I was.

Q. Did you hear him testify to that effect?

A. What was the question again, now?

Q. That he had knowledge of the sale of the Hill Com-

pany stock from Mr. Weaver at the time he announced his retirement from Nashville Bank and Trust Company.

A. I couldn't answer you categorically on that. It was my recollection that the intent of his statement was that he felt that the bank was going to be sold, and I guess that would be——

Mr. Farris: If the Court please, I object here. The record shows what Mr. Primm said. It is in this case; it is part of the transcript. This witness's memory with regard to that is not in any way relevant here.

Mr. Minicus: The witness's memory was just disclosing itself, Your honor, when he was interrupted.

The Court: Go ahead with your answer.

[fol. 1372] Mr. Minicus: I will pass that type of questioning Mr. Fleming.

The Witness: I will answer you the best I can; but, frankly, I don't recall just exactly what he said.

Mr. Minicus: Thank you.

The Witness: Do you still want me here to look at this?

By Mr. Minicus:

Q. No, I think we have finished with that.

Mr. Minicus: As I understand it, Your Honor, this organizational chart that was objected to has been withdrawn to put in another chart.

By Mr. Minicus:

Q. Once again I invite your attention, Mr. Fleming, to the handwritten note of February 22, 1964, and ask you the purport of the statement there, "First try for merger." What was the intent behind that?

A. The intent behind that was that no one would have assurance as to whether the Comptroller of the Currency would approve such a merger. After all, a bank is a very regulated institution. If we applied for a merger, we had no way to know if it would be approved by the Comptroller.

Q. If it were not approved, what alternatives were there?

[fol. 1373] A. If it was not approved, it wouldn't go through.

Q. Why did you say first try for merger?

A. Because I thought it might have been of interest to him. I wasn't sure. That in case application was filed and four or five months had gone by and the bank had suffered because of the uncertainty during that period, he should at least have some protection as to what would happen to the value of his stock at the end of that period, provided the merger request was turned down.

Q. Did he purchase that stock from the Hill Company for any desire for protection?

A. I don't know.

Mr. Farris: If the Court please, I object to that question of this witness—knowing what another man's purpose was.

The Court: He said he didn't know.

The Witness: May I explain what I was trying to say to you?

By Mr. Minicus:

Q. Yes, sir.

A. When I made a suggestion, it was strictly a penciled memorandum there which he did not accept and which there is no indication on there of any initials of his. It is only mine, something for him to consider. And frankly, he did not give me much encouragement. I was trying to sell him [fol. 1374] on the idea that, all right, if we go ahead and apply for this merger; and if the Comptroller turns it down, it is granted that in this uncertainty period there that the bank might suffer, which it did suffer in that interim period because of the uncertainty.

Then he would naturally feel that his stock wouldn't be worth as much money at the end of the period of uncertainty if the merger request was turned down than at the beginning. Therefore, in my little memorandum I said I would recommend to our people that we would do this and then in case the merger application should be turned down, we would do this other.

I was trying frankly to use that as a selling point.

Q. Do what other? You said you would do this other.

A. I said I had indicated to him that in case the merger was turned down, we would try to find a buyer for his stock otherwise.

Q. Did you have any particular buyer in mind, Mr. Fleming?

A. Yes, I had in mind perhaps the Third National Company.

Q. What is the relationship of the Third National Company to the Third National Bank?

[fol. 1375] A. The Third National Company is affiliated only to the extent that the stock is trusteed for the benefit of the stockholders.

Q. There is in evidence, Mr. Fleming, Government Exhibit 14 and Government Exhibit 15, which are the resignations of Mr. Hill and Mr. Thweatt; and these resignations are dated March 11, 1964. Was that before or after the handwritten note that we have just been discussing?

A. That would be after.

Q. Thank you, sir.

A. I could be wrong on the date of it. I was not involved in the bank's management at all at that time. Whether it was in January or March, I couldn't say for sure. The only thing I am sure about, it was before the exchange of ownership of stock.

Q. As a matter of fact, wasn't the agreement to merge the two institutions executed before the sale of the stock was completed?

A. With very definite qualifications, subject to the approval of the board of directors, the ratification of the stockholders, and the approval of the Comptroller of the Currency.

Q. Mr. Fleming, on your direct testimony you enumerated sixteen advantages which resulted to the advantage of the convenience and needs of the community——

[fol. 1376] A. Yes.

Q. —by virtue of this merger. Would you just go through those again and indicate which advantages you there pointed out were not also provided by the Nashville Bank and Trust Company?

A. To its customers?

Q. To the community. We are talking about the convenience and needs of the community here.

A. I presume that its customers would be included in the community, would they not?

Q. A very narrow sense, sir; they would be a small segment of it.

A. Would you repeat your question?

Q. I would like to know which of those sixteen enumerated advantages you say accrued to the community because of the merger were not also available to the community from the Nashville Bank and Trust Company operating of itself.

A. I would say first the larger lending limit of $2,400,000 was not available.

Q. Let us stop there for just one moment, if you will, please.

A. Certainly.

Q. You said the lending limit was $2,300,000—

A. $400,000.

Q. What was the lending limit of Third National Bank [fol. 1377] just prior to the merger?

A. Two million dollars.

Q. So that the merger increased the lending limit available to the community by $400,000. What, sir, was the lending limit, the top lending limit, of the Nashville Bank and Trust Company prior to the merger?

A. I don't recall. I think it was in the neighborhood of $600,000.

Q. That was at the fifteen percent limit. But do you know that it was possible for the Nashville Bank and Trust Company—and this is a matter of evidence—to lend up to twenty-five percent?

A. Yes, with the specific approval of the board of directors. However, we only picked up $400,000 in the increase of our legal limit by the addition of their capitalization.

Q. Prior to the merger, if one were to add the lending limit of Third National Bank to that of Nashville Bank and Trust Company, it would exceed $3,000,000. So was there not more credit available to the community on single loans before the merger than there was after the merger?

A. Not on single loans, no, sir.

Q. If Mr. X went to your bank, or X Company, and borrowed the lending limit of $2,000,000, and then went over to the Nashville Bank and Trust Company and borrowed the lending limit of $1,000,000, he would have [fol. 1378] $3,000,000, wouldn't he?

A. If he had gone to the First American and borrowed \$2,500,000, he would have had another \$2,500,000; and to the Commerce Union, \$1,500,000 more, and to New York, an unlimited amount—

Q. That is not responsive to my question, Mr. Fleming. My question is, if one went to the two banks, or if any of the citizens of the community went to the two banks, they would have more credit available than there was after the two banks were amalgamated into one?

A. The question of availability is a moot question. In the first place, unless an individual carries a bank account with a bank, he doesn't have a call on that bank for a loan. Usually you have had to have a banking relationship before you can go into a bank and request a loan.

Secondly, the point is whether you would have a multiple available of credit. The question is how much can one company borrow from one bank without going and having to open up a new account with another bank to have credit.

Q. What does that have to do with the convenience and needs of the community?

A. Simply this. We have had any number of large concerns that have come into this territory that need very substantial lines of credit from one bank. Now, for a long time in the South—and particularly here in Nashville—[fol. 1379] we couldn't provide such credit. So what they would do would be to go to New York or Chicago, pick out their lead bank— and it makes all the difference in the world as to which one is the lead bank. Then that lead bank would spread credit around to us in the provinces, so to speak, in the manner in which they wanted.

Therefore we would not have the main relationship. The main relationship would be in the East or be in the Middle West.

What we have been trying to do in this section is to be able to extend enough credit to one customer to where we would be the lead bank, and therefore be the main banking institution to take care of their affairs. It makes all the difference in the world, Mr. Minicus, as to how much you can lend to one customer as to whether you can develop those relationships with the large companies that are coming into the South.

Q. And I think you testified that the added increment to Third's lending limit was $400,000?

A. Twenty percent; yes.

Q. Was that a sufficient increase to attract these very large corporations you are speaking of?

A. Four hundred thousand dollars is not a small amount. Sometimes people that live in the East might think it is a very small amount when you deal with big figures. [fol. 1380] But down here we are still dealing with comparatively small figures. When you increase your legal lending limit by twenty percent or $400,000, it is a factor.

Q. Weren't you talking about corporations and didn't you testify that what you were trying to do is to try to get them to move into the area from outside by virtue of this larger lending limit?

A. That is only one phase of it, Mr. Minicus. One of the principal sources of demand for credit has been in the housing field here, in construction. We have got any number of customers that, if we couldn't have loaned them that extra $400,000, it would have meant just that fewer houses built, that fewer apartments put up.

Q. But if they wanted to, they could have gone over to Nashville Bank and Trust Company and gotten another million dollars.

A. If they had carried an account there, and if the Nashville Bank and Trust wanted to loan it to them. But just because money is available, you can't go to the First National Bank or Chase Manhattan and, because they have got a legal lending limit of $50,000,000, say to them, "I want you to let me have a loan." You don't borrow money that way.

Q. Didn't you testify, Mr. Fleming, that a great many of these accounts were maintained in both banks?

A. I testified that a corporation has a main account, and [fol. 1381] usually lots of times they will have a complimentary account or a secondary or third account with other banks in the town. But in practically every instance they have what they consider to be a main account.

That is their principal banking connection. The others are more or less satellites to that.

Q. Do you have any conception, Mr. Fleming, of how

many customers there were in common between the Nashville Bank and Trust Company and the Third National Bank?

A. I really don't know.

Q. I show you Defendant Banks' Answer to Interrogatory No. 14, which requested the identification of the common accounts, and I will just ask you to indicate to the Court how many pages that goes on for.

A. I haven't counted them. I don't know.

Q. Would you just run through the number of pages?

A. You mean you want me to count these pages?

Q. Just the pages, sir.

The Court: Are they numbered?

Mr. Minicus: The pages are not numbered, no, sir.

A. I don't know what's on these pages, but I am counting what you have here.

By Mr. Minicus:

Q. These are by the bank in response to the Interroga- [fol. 1382] tory.

A. To save time, why don't you tell me how many there are, and then I can give you an answer as to whether I think it is right or not.

Q. Would you say there were substantially over a thousand customers in common in the two banks?

A. I wouldn't be a bit surprised. We have about 110,000 accounts. I would say that would be very small—less than one percent. I wouldn't be a bit surprised.

Q. But considerably larger for Nashville Bank and Trust Company?

A. That would be only natural, of course. But I would say it would be a very small percentage of ours, if it is a thousand.

Q. And to the extent that those people were depositors in both banks, they would have available to them the larger lending limit that existed prior to the merger, than that which existed afterwards?

A. No, not necessarily available to them. If a man carries a savings account of $1000 and if he carries a checking account of $500, I wouldn't say he would have available to him the legal limit of the Nashville Bank and Trust.

Q. Is the $2,400,000 now permissible to the Third National Bank also available to all citizens of this county?

[fol. 1383] A. It was not available unless they were first considered responsible for it, and also not unless they had been carrying a sufficient balance with us to justify our lending that amount of money. I am sure you are familiar with banking practice.

That is, you expect a fifteen to twenty percent compensating balance on your loans. And when a company comes in and borrows money from you, you expect them to have maintained a banking relationship with you of sufficient size to justify the amount of credit they are requesting.

Q. However, since, to the extent that customers could meet that qualification in both of the banks, they had available to them a greater extent of credit before the merger?

A. I wouldn't say they had available to them. I would say that the banks were able to lend if they so desired customers in those amounts.

Q. Thank you, sir. That, sir, is the first of the sixteen advantages you enumerated that resulted from the merger. Will you continue now?

A. The second benefit that I felt was seventeen banking offices are available to Nashville Bank and Trust customers, where only two were available before the merger.

Now, what I meant by that was to the extent of the number of customers of Nashville Bank and Trust—and I [fol. 1384] believe there was over 10,000 such people—that those 10,000 had seventeen banking offices rather than two.

Q. If the customers of Nashville Bank and Trust Company prior to the merger had wanted to avail themselves of the branches of Third National Bank, could they not readily have transferred their business to Third National Bank?

A. Certainly.

Q. Then these branches were available to them prior to the merger, weren't they?

A. They were not provided by the bank with which they were doing business. That makes a great deal of business.

Q. But they didn't have to continue doing business with that bank, did they?

A. But they were doing business with them.

Q. But they could have changed at any time, on any whim?

A. They could have moved their account to New York if they wanted to.

Q. And they could have moved it to First American and had more branches available?

A. They certainly could if they wanted to.

Q. And they could also have moved to Commerce Union and had quite a few branches, couldn't they?

A. I am sure that they could.

Q. Then can you explain to me why they stayed in Nash-[fol. 1385] ville Bank and Trust Company?

A. Presumably they preferred to do so for maybe any number of reasons. It might have been that their father did business there. It might have been that their grandfather did business there. Or it might have been that they liked Mr. Hackworth or Mr. Hill. Or it might have been that they were an employee of the Hill Company.

Q. Whatever that purpose was, it no longer existed, did it, after the merger? They could no longer gratify that preference after the merger, could they, Mr. Fleming?

A. I couldn't answer you in broad terms like that. It might have still existed or it might not have.

Q. But, if it did, they couldn't have gratified it?

A. I don't follow exactly your question. Give me your specific question.

Q. You said that these people had a preference, or might have had a preference for Nashville Bank and Trust Company.

A. It is only the rule of reason that if a man is doing business with a particular bank, he has a reason for so doing and certainly he must have had a reason to be doing business with the Nashville Bank and Trust or he wouldn't have been doing it.

Q. All that I asked you, sir: Was that reason frustrated [fol. 1386] by virtue of the merger?

A. No, I don't think so, because the location is still there. A great majority of the people that were managing at Nashville Bank and Trust are at the same locations, the same desks. The customers have the same people there with

which to do business, plus all of these other services that we offer.

Q. Is it under the same ownership and is it the same bank?

A. It is under partially the same ownership because the stockholders of the Nashville Bank and Trust now own stock in the Third National Bank.

Q. Mr. Hill is still quite important?

A. Yes, Mr. Hill is still a substantial stockholder of ours. We have been talking a great deal about the change of ownership. I think that nearly all of the Nashville Bank and Trust stockholders are still stockholders of the Third National Bank. They own a portion of the two banks.

Q. Let's pass beyond the branching argument. What was number three?

A. The Nashville Bank and Trust Building on Union Street has been remodeled and made more attractive and servicable for the employees and the public. Are you asking me to comment on that?

Q. I would like to question you on it, sir.

[fol. 1387] A. All right.

Q. What was unattractive about the quarters of the old Nashville Bank and Trust Company?

A. If you had seen the quarters of the old Nashville Bank and Trust——

Q. I have, sir.

A. —I don't think you would ask me that question.

Q. I have seen them. That's why I asked you the question.

A. We have pictures which I can show you which can answer your question a great deal better, I think, as to how they looked before the merger and how they looked after we remodeled.

Q. We probably have those pictures offered in evidence, but I would like to have your opinion.

A. My opinion is this, that the quarters of the Nashville Bank and Trust have not been remodeled or brightened up over a long period of years. We know from experience that branches and main offices, or any banking facility—the public is much better served by convenient branching, modern fixtures, than by old, dingy, outmoded equipment, including buildings.

[fol. 1388] Q. Then what was the matter with the many

thousands of customers that continued going to Nashville Bank and Trust Company? They knew your bank with its chrome and polished panels was right around the corner, they could have changed at any time. Why did they stay there?

A. Of course they had a nucleus of very loyal customers, but maybe if they had gone ahead and spent the money on the buildings they might have been able to get a lot more customers.

Q. Was the bank profitable at the time of the merger?

A. Yes.

Q. Thank you, sir.

What was the fourth advantage to the community, sir?

A. The Nashville Bank and Trust has received the benefits of membership in the Federal Reserve System.

Q. How does that benefit the needs and convenience of this community?

A. It pertains primarily to the over ten thousand customers which the Nashville Bank and Trust had. I think they were a very important part of this community. I think that——

Q. Albeit a small section.

A. It has been stressed time and time again that nearly [fol. 1389] all of them lived in Davidson County. I'd say ten thousand people and put their families with them, it would mean forty or fifty thousand people.

Q. How many banks were there in the city available to that forty or fifty thousand people that were members of the Federal Reserve Board?

A. Well, there were three banks, the First American, The Commerce Union Bank, and the Third National Bank that were members of the Federal Reserve system.

Q. So the fact that Third acquired Nashville Bank and Trust Company didn't give the people of the community anything they didn't have before, did it, Mr. Fleming?

A. It enabled the bank with which they were doing business to render them a more efficient collection service on the out-of-town checks which they deposited with that bank. That would mean that it decreased the float in the account, and by decreasing the float, it would make available to the customers their deposits much faster.

Q. Were you present in Court, Mr. Fleming, when Mr.

Stevenson from the Federal Reserve Bank in Atlanta testifield that there was no disadvantage to the customers by virtue of the system that Nashville Bank and Trust Company was then pursuing in the collection of its checks?

Mr. Farris: Now if the Court please, I don't believe that's exactly what Mr. Stevenson said. As I recall, he [fol. 1390] said that a bank that was not a member of the Federal Reserve could not receive funds as quickly from the Federal Reserve because it had to go through its correspondent bank instead of direct, and that is a definite difference to the customer.

Mr. Minicus: I deny that Mr. Stevenson testified to that effect, sir.

Mr. Stevenson testified that there was no competitive disadvantage to the bank by not being a member of the Fed, nor was there any disadvantage in the collection of the checks.

The Court: The record will speak for itself, what he testified to.

The Witness: Would you mind reading exactly what Mr. Stevenson said?

Mr. Minicus: If you will wait for us to get a copy of the transcript.

The Court: Well, let's get along here.

Mr. Minicus: Let us return to that, Your Honor.

By Mr. Minicus:

Q. Would you state the next advantage?

A. A fully automated operation, including two computers have been made available to customers of Nashville Bank and Trust.

[fol. 1391] The Court: Fully automated what?

The Witness: A fully automated operation, including two computers have been made available to customers of Nashville Bank and Trust.

The Court: Go ahead.

By Mr. Minicus:

Q. What is the cost of the installation—has the cost been to Third National Bank in installing and maintaining a computer with all of the automated system?

A. I can't answer that. Mr. Gray who is going to testify will, but I can tell you what I felt the cost to have automated the Nashville Bank and Trust would have been if you would like for me to.

Q. You can't answer that, sir?

A. Yes, sir.

Q. I say you can't answer my question?

A. I can't answer you what the Third National Bank's was, I don't know for sure, but I can tell you exactly what I think it would have cost to have automated the Nashville Bank and Trust.

Q. Do you recall your testimony, sir, on August 14, 1964, before this Court, when you said "to automate means buying a computer, a computer today costs five hundred thousand dollars, and you have got to have a rather substantial volume to justify such an expenditure?"

[fol. 1392] A. I do. I still feel—

Q. Why are you unable to tell me now what it would cost?

A. I feel the same way as I did then. I couldn't tell you exactly what it would cost. I can tell you though that we have considerably over a million dollars invested in automated equipment, and computers, maybe a million and a half today.

Q. Isn't that the answer to my question, Mr. Fleming?

A. If it is, I'm glad to answer it.

Q. Now what advantage does the—this automated equipment give the former customers of Nashville Bank and Trust Company?

A. Well, in the first place, it makes use of the great breakthrough we have had in banking in the last six or seven years, which is magnetic ink. We furnish our customers imprinted checks. That is with their names printed on their checks, and on the lower-left hand corner is magnetic ink.

Now that magnetic ink enables those checks to be picked up by the automated equipment and by the computer. Now particularly the automated equipment, now if that was not available, those checks would have to be handled manually, and today, if the banking system attempted to handle those [fol. 1393] checks manually, the service charges which were discussed here yesterday would go up tenfold. This is automation and computers are enabling the banking

system, just like it is the telephone company, to handle the tremendous amount of paper work on an automated basis rather than manually.

Q. How many banks are there in the United States, Mr. Fleming?

A. There are a little less than fourteen thousand not including branches.

Q. What percentage of those banks are automated, Mr. Fleming?

A. I beg your pardon?

Q. What percentage of those banks have computers?

A. I haven't the slightest idea.

Q. When you speak of the banking system, are you intimating that most of those banks have computers?

A. Oh, I would say that the great majority of the banks do not have computers.

Q. And now—

A. But I would say that most of the banks today are automated more than the Nashville Bank and Trust. There's a wide difference between automation and computers.

Q. We are speaking about computers at the moment.

A. Computers, all right, sir.

Q. Do you have any idea what percentage then of [fol. 1394] the banks in the United States have computers?

A. No, I do not, I have never seen any such figure.

Q. Can you testify, sir, what the size of a bank would have to be for it to be able to afford a computer?

A. I didn't testify the exact size, but I would say that it would have to be a considerable size today to justify either the rental or the ownership of equipment. I had estimated that it would cost the Nashville Bank and Trust Company over ten thousand dollars a month to rent automated equipment including computers.

Q. Now then, sir, will you kindly tell us at the end of this discussion of automation, what convenience or need was gratified to this community as a whole by virtue of the fact that Third National Bank acquired Nashville Bank and Trust Company and its customers had available the automated system?

A. My answer was not to the community as a whole; it applied only to the customers of Nashville Bank and

Trust, to the ten thousand customers and their families, including say forty thousand people.

Automation, including computers, enable the bank to handle the paper work, that is their checks, more efficiently and more economically. That in turn, in my opinion, is a very definite service to those people.

[fol. 1395]. Then again, we find that as with the larger loan limit, the branching system, automation, that these were advantages not to the convenience and needs of the community, but to the depositers, in your opinion, sir, of the Nashville Bank and Trust Company?

A. The depositers and their families.

Q. Thank you, sir.

Now can we pass to the next one after automation. What was the next one?

A. Number six, a funded pension plan, larger salaries, more generous fringe benefits, and better working conditions are made available to the Nashville Bank and Trust personnel and their families.

Would you like for me to comment on that?

Q. I would like to ask a question.

A. All right, sir.

Q. How many employees were there in the Nashville Bank and Trust?

A. There were slightly over a hundred.

Q. So there were one hundred people plus the members of their families that benefited if they did benefit from this procedure?

A. There were say a hundred and ten people plus their families, maybe four or five hundred, but I would say this to those individuals a funded pension plan, larger salaries, [fol. 1396] better fringe benefits were of the very greatest importance, and I take the position that they were just as important in this community as anybody else.

Q. I don't think anything in my question challenged that. Unfortunately the law speaks of the convenience and needs of the community, not of individuals.

A. I take the position that they were a part of the community; they lived here, they voted here, they paid taxes here.

Q. I only tried to find out how large a segment they were, sir.

A. Okay.

Q. And the next proposition is number six, am I correct, sir?

A. Number seven.

Q. Seven.

A. Greater research facilities, better expertise in trust operations and management in depth have been made available to the trust account handled by the Nashville Bank and Trust Company.

Q. Prior to the merger, which was the oldest trust department in the city of Nashville?

A. The Nashville Bank and Trust.

Q. Can you describe to us any complaints that you are aware of with regard to the research of that trust department [fol. 1397] ment or the ability of its department in management?

A. I have heard of no particular criticism.

Q. Thank you, sir.

What is number eight, Mr. Fleming?

A. I would like to comment a little bit more on that if I may though.

Q. You can on redirect.

A. Okay.

A larger capital surplus and reserve base plus more stable and substantial earnings give better protection to Nashville Bank and Trust depositors and serve as a base to support further expansions.

Q. What was the trouble with the earnings at Nashville Bank and Trust Company, Mr. Fleming?

A. Well, the earnings, considered strictly for the type bank that was being operated, might have been considered satisfactory on a percentage of capital investment, however, I have compiled a little analysis here as to what would have happened to those earnings if they had taken what I considered to be the necessary steps——

Q. Perhaps we can get into the future earnings, I'm talking about the——

A. This is not the future—

Q. I'm talking about the historic earnings.

A. I would say the earnings were totally unsatisfactory [fol. 1398] if the bank had done the things which were absolutely necessary in my opinion to make it a modern,

efficient bank, and I will be glad to go through and tell you what was necessary to be done if you would like to have it.

Q. I didn't ask you that question, sir. I asked you were the earnings large and satisfactory prior to the merger?

A. All right, I'll answer your question specifically. The 1963 net income of the Nashville Bank and Trust before federal income tax was $466,730.40. I feel that if salaries had been increased, if fringe benefits had been increased on the same basis we have increased them, if a past service pension plan had been installed, and amortized like we are amortizing it, if the bank quarters had been remodeled, if a minimum of two branches had been opened, if an auditing department, which I felt to have been absolutely essential, had been installed, if a business development department had been enlarged to keep pace in Nashville, if a credit department, which was absolutely essential, had been set up, if the bank had automated, including the rental of a computer, that $567,000 would have been turned out to be a red figure of $7,977.

I wouldn't call that adequate earnings.

Q. That is your computation, sir?

[fol. 1399] A. That is my computation. I have it in detail. I'll be glad to spell it out and most of it is on the basis of what we have already done, not speculative.

Q. Do you think that the shareholders and the directors of Nashville Bank and Trust Company who were receiving in excess of $22.00 a share on their investment, might disagree with you on that, sir?

A. I think that if I could have spelled out to the stockholders what was necessary to be done and what I might say has already been done in most of these instances, I'm not speculating on what should be done, I'm telling you what we have done in increasing salaries and past service plans and remodeling the buildings.

All I'm saying is take the earnings for 1963 and let the management do what we think was necessary and have done instead of having a profit, you would have had a loss.

Q. That is entirely your opinion?

A. That is my opinion.

Q. Based on your computation?

A. On figures I will be glad to give you in detail.

Q. The fact of the matter is that the bank was earning in excess of $22.00 a share?

A. The bank on the basis of the way they were keeping [fol. 1400] their books——

Q. Will you please respond to my question? I have the right to ask you the question, and it is your duty to respond.

Mr. Farris: If the Court please, he should let the witness answer the question. The witness starts to answer the question, and he doesn't like what he's getting, and he is trying to change it.

Mr. Minicus: I admit the witness has been using the witness stand as a stump to express his own opinion. There is certainly a rule on cross examination the responses must be responsive to the question.

The Court: That's true. Now if there is any objection to any specific question, make it. I will rule on it at the time, but it's difficult to back track.

Mr. Minicus: I'm trying to be courteous to the—

The Court: Restate the question and let's see what it is.

(The last question was read by the reporter.)

The Court: Is that his answer?

Mr. Minicus: The question is the fact of the matter is that the bank was earning in excess of $22.00 a share.

[fol. 1401] By Mr. Minicus:

Q. Is that not correct, prior to the merger?

A. I would say that the bank was earning over three hundred thousand dollars. I have not computed it per share.

Q. Thank you, sir.

A. Wait a minute. I haven't finished my answer. Now if the three hundred thousand were earnings which I felt could stand up, I would say they were satisfactory, but I say to you this——

Q. I didn't ask you that last question.

A. They will not stand up.

Q. If they were satisfactory, Mr. Fleming. I simply asked you what they were, and you said you didn't know.

A. All right.

[fol. 1402] Q. Will you kindly give us the ninth advantage——

A. A well-developed recruit and trainee program gives assurance that replacements will be available in all echelons of management.

Q. That is of benefit to whom?

A. It is very definitely to the benefit of the welfare of the Nashville Bank and Trust, of its stockholders, and of its customers. If management wasn't being trained to take the place of these older men, then the customers would have been very definitely hurt and the customers being hurt, the public would have been hurt.

I think this is one of the most essential things involved in this whole merger. And I might add to you, Mr. Minicus, they did not have any recruiting program. They had no trainee program. And I don't see how a bank of that size could possibly operate today without such.

Q. How many officers were there in the management core of Nashville Bank and Trust Company?

A. I believe there were twenty-two.

Q. How many of those were under the age of thirty-five?

A. There was one, 28; one, 25; one, 30; one, 32; all in very junior positions.

Q. Then there was another one 38, was there not? And one, 19, is that correct, sir?

[fol. 1403] A. I see one, 19; and I see one, 38.

Q. That makes a total of seven out of twenty-one officers —one third of the officer core, then—that were under forty? Is that correct?

A. I believe there were twenty-two officers.

Q. Almost one-third of the officer core was under forty years of age. Is that correct?

A. Yes.

Q. They are now your employees, are they not, all but one?

A. All but one; he resigned.

Q. Do you know how many of those men are college graduates?

A. No, I don't. I do not.

Q. You don't know, do you, sir, whether any of them are college graduates?

A. No, I do not.

Q. They may all be college graduates, could they not be?

A. They could be, as far as I know.

Q. In the next group, between forty and sixty years of age, how many employees were there in the Nashville Bank and Trust Company?

A. Between forty and sixty?

Q. Yes, sir.

[fol. 1404] There is one, two, three, four, five—six. And one of those has resigned.

Q. So that means that more than half, at least, of the management core of the Nashville Bank and Trust Company was under sixty years of age?

A. Yes. But most of that group was very close to sixty.

Q. When you say most, what number do you mean by most?

A. Well, let's see, there is one, 57; one, 59; there is another one, 57; there's three of them—two of them 57 and one of them 59 out of the six.

Q. Is that an advanced old age? I certainly hope not, Mr. Fleming?

A. Well, I am 58, and I am not as young as I used to be.

Q. Neither am I, sir.

A. I would hate to make the bank plan for the next fifteen years on anybody 58 years old.

Q. Did you not testify, sir, there were seven young men there under forty?

A. I think it was six. I counted them. I will count them over if you want me to.

Q. No, thank you. Let us go on to advantage number 10, if you will, please, sir.

[fol. 1405] A. A small business affiliate chartered under the Federal Small Business Act gives added assistance to the small business customers of Nashville Bank and Trust.

Q. Does that small business affiliate only serve customers of Nashville Bank and Trust Company, Mr. Fleming?

A. Well, it serves the customers of the bank with which it is affiliated. It just so happens that the small business affiliate was owned one hundred percent by the Third National Bank. My feeling is—and I so expressed myself—that the facilities of such a company can be of great help

to the small business customers of the Nashville Bank and Trust, which is now part of the Third National Bank.

One of the things that was trying to be pushed at the federal level in every way possible is that more of these small business companies take an active part in trying to help out the little businessman by doing things that we can't do under regulations in the banking business.

For instance, we can make a loan through this small business affiliate to a man that is running a drugstore on a ten-year basis. We can take a second mortgage on his equipment. We can even buy stock in that company. But we couldn't even begin to do that in the banking business.

So the purpose of the Congress setting up these federal small business companies where they could be chartered federally was that a new avenue be opened up to help the [fol. 1406] small businessman. It just so happened that we were the only bank in town that had such an affiliate that we owned a hundred percent.

We are now able to make those facilities available to the ten thousand-odd customers of the Nashville Bank and Trust, many of whom are small businessmen.

Q. If I were a customer of the Capital City Bank and went to the Third National's small business affiliate, is it your testimony, Mr. Fleming, that your affiliate would refuse to accommodate me should I desire to be—.

A. No. We might do it. But we wouldn't be nearly as interested in considering a proposition from a non-customer because the resources of the small business affiliate are rather limited. If they were much bigger, if they were as big as a bank, there would be no question.

But they are rather limited. We are really trying to channel such limited funds as are available for the needs and benefits of the small businessman who is doing business with us. That's only natural. We want to help our customers more than we want to help somebody else's customers.

Q. Then the Third National Company has complete control of this small business assistance—

A. It is not the Third National Company. This is a different company entirely.

Q. The Third National Bank has complete control, then, [fol. 1407] of this small business——

A. Yes, a hundred percent. This is called the Third's

Small Business Company. We own a hundred percent of the stock in the bank.

Q. You have no competition in that field in this city?

A. Oh, no, there is competition in it, all right. But I said no other bank in town, as far as I know, owns a hundred percent. Now, there are banks that own interests in other small business companies.

Q. Will you name them, sir?

A. I think the First American does. One of their officers was on the board of a rather large small business company that was organized in Nashville. I am not sure whether the Commerce Union Bank went into it or not, but the Nashville Bank and Trust did not have any affiliation with a small business company.

Q. How many small business companies are there in Nashville, sir?

A. You mean federally chartered such as this?

Q. Yes, sir.

A. I don't know whether the one that was organized here about the same time ours was is still domiciled in Nashville or not. But it would be either one or two. It would either be ours alone, or two. I am inclined to think that the [fol. 1408] other one was transferred to Atlanta.

Q. Then you are the only federal small business company in the City of Nashville? Is that correct, sir?

A. I think so. I couldn't say definitely.

Q. And that affiliate is not available as freely to the customers of other banks as it is to the customers of Third National Bank?

A. We would very definitely give preference to our customers in the limited funds that we have available. If we had ample funds available, we would be glad to make them available to the community at large. But we just don't have that much money in the company.

Q. To what extent are federal funds involved in the creation or operation of these federal small business companies, Mr. Fleming?

A. A Federal small business company, I believe, can borrow three times its invested capital from the Small Business Administration.

Q. Then is it your testimony that these federal funds are

available on a preferential basis only to the customers of Third National Bank?

A. I did not say only. You said a preferential—

Q. I said a preferential basis.

A. Everything else being equal, we would give preference to our customers. In the first place, we would know our [fol. 1409] customers better. We don't have enough money to go around. If we had enough to go around, we would be glad to spread it broadside and help a lot more small business companies.

But we don't have enough. Therefore we are going to try to help our own customers take care of their needs first.

Q. There is no other bank in town that has an affiliation with any federal small business company?

A. I said I think the First American has stock in one, but I am not sure.

Q. A federal small——

A. Yes.

Q. I thought you said there was only one in town, sir.

A. They have stock in one that is located in Atlanta, in my opinion. It was in Nashville.

Q. That doesn't help the people in Nashville very much, does it, sir?

A. Well, they have an office here. They are domiciled here. They have a large office here.

Q. Will you name the company?

A. I can't think of the name of it. I could get it for you, but I really don't know the name.

Q. What is the eleventh advantage that the community received through this merger, Mr. Fleming?

[fol. 1410] A. Special checking accounts and a wide assortment of savings plans provide additional conveniences for the public.

Q. What is the advantage of a special checking account, sir?

A. The advantage of a special checking account is that a customer can come in and pay a specific sum of money for a certain number of checks. Evidently the public thinks it is a service, because we have over ten thousand of them outstanding now.

Q. Wasn't that possible with the Nashville Bank and Trust Company before the merger?

A. To my knowledge they did not offer a special checking account.

Q. No, but was it not possible to go in there and write a regular checking account, say, for a certain amount of money per check?

A. That's a whole lot of difference between a special checking account and a regular checking account.

Q. What is the difference?

A. In a regular checking account you deposit a certain amount of money in the bank. Then you are subjected to a service charge, based on its activity.

Q. In the special checking account do you deposit the money?

[fol. 1411] A. Oh, yes; but you are charged so much per check that you use, and you pay for it at the time you get your checks.

Q. At the Nashville Bank and Trust Company were you not so charged for each check if you wrote a check on your regular checking account?

A. It is on a variable scale. The public wants to know exactly what a check is going to cost them, rather than to have all kinds of forms of service charges and variations which they don't understand. They do understand that they can pay a dollar and get so many checks without any additional cost.

Q. How many checks are there in a checkbook, in a special checking account, Mr. Fleming?

A. I really don't know.

Q. Let's say one of us wrote twenty checks on a Third National Checking account. What would that cost, Mr. Fleming?

A. I don't know. I mean, frankly——

Q. You have been testifying about the advantages.

A. I am not too familiar with just exactly what our service charge arrangement is. We will have people who will come on who will testify exactly what it is. I must confess I don't know exactly what the service charge arrangement is.

Q. Then how could you say that it benefited the convenience and needs of the community?

[fol. 1412] A. Because it enabled people, as I have mentioned, I believe, twice before, to take a certain sum of

money—come in and buy a certain number of checks, and know that they are not going to have to pay anything else in service charges.

The service charges are so variable, they are so different, that I doubt if many people in Nashville know exactly what they are.

Q. Let's try the twelfth one, Mr. Fleming.

A. A new 20-story office building is now under construction which will provide to the public the most modern and convenient banking facilities available.

Q. Isn't this about the same as your earlier one, where you derided the banking quarters at the Nashville Bank and Trust Company, and that they got better quarters by going over to your existing bank facility?

A. I didn't say they got better quarters coming over to ours. I say they got better quarters, plus we have remodeled theirs.

Q. Now you are building one right around the corner from them?

A. No, we are not building one. It is being built by an insurance company in Nashville, and we are renting space.

Q. You will occupy it?

A. We will occupy about three floors out of the twenty.

[fol. 1413] Q. What will you do with the old Trust Company quarters?

A. We haven't decided. I presume that we will keep them.

Q. In operation as they presently are?

A. That is our intention. We told the Court at the beginning of these hearings that we would make as few changes as possible on anything that happened in that location until after this case is fully resolved. That's what we are trying to do.

Q. After the case is fully resolved, what will happen to those facilities?

A. I don't know. We haven't gotten that far at all. We take one step at a time.

Q. What will happen to Third National's present facilities after you occupy the new quarters?

A. We haven't made a decision on that yet. It hasn't been discussed with our board of directors at all. We might keep a department or two over there, and we might not.

Q. Possessing two large offices within a block of each other, is it your testimony that you have gone in to leasing arrangements with extensive space in a third, all within one or two blocks of each other?

A. Yes, but with the very definite decision that we will [fol. 1414] move our main banking operations into the new building across the street. And whatever we leave in the old location would be of very unimportant nature.

Maybe something connected with consumer finance or something of that type, but it would have very little effect on our overall operations. The net result will be that we will move our main operations into the new bank building and Nashville Bank and Trust will continue where they are.

Q. So that the present quarters will at most, then, of Third be a departmental facility?

A. I am not sure that we will have any department over there. As I said, we haven't made a decision on it. We haven't formed a judgment. But if any were left over there, they would be very, very inconsequential.

Q. Did you once testify that it is the long-term objective to move your trust facilities into the present quarters of what was formerly Nashville Bank and Trust Company?

A. That was our intention, and we had architectural plans drawn with the idea of moving our entire trust operation there.

We came to the regrettable conclusion that it wasn't big enough. Therefore we had to consider other alternatives. That is one of the reasons very frankly that we were so anxious to rent this space in the new building being built because really, today, our trust operations are divided. [fol. 1415] We have the Nashville Bank and Trust operation exactly where it was before with the same personnel and ours where they were before. We have joint committees and joint control. But so far as the physical operations, they are in two different locations. That is not very economical.

Q. Are there any alternatives under consideration at the present time for the old Nashville Bank and Trust Company quarters?

A. You mean other than what they are being used for now?

Q. Yes, sir.

A. No, sir, we have nothing whatsoever under consideration with respect to the sale or the disposal of that property.

Q. So there is no prospect, then, according to your testimony—and correct me if I am in error—of consolidation, but there is the probability of three large facilities operated by the Nashville Bank and Trust Company, all within a block or two of each other?

A. Operated by the Nashville Bank and Trust?

Q. Operated by the Third National Bank.

A. No, I didn't say that. I said there would be two large facilities, and one that would be very insignificant if we decided to do that. I wouldn't say large by any means. I have tried to point out as emphatically as I can that when [fol. 1416] the new building is completed, we will move ninety-five percent or more of our operations into the new building. But we expect to retain the Nashville Bank and Trust office with the exception of the trust department. The trust department would move over into the new building with ours.

Q. Would you reduce the space now being used by Third National Bank?

A. Reduce the space?

Q. That is, in your present quarters.

A. Oh, yes; of course if we moved out, we wouldn't be occupying it again. You can't occupy at the same time two spaces.

Q. You have indicated you were going to use it for some departmental use, did you not?

A. I said we might possibly do it. I don't know what we will do. We have not discussed it, I said, with our board of directors. We could decide to sell the building. In fact, some of our directors feel that we should. That might be the final decision.

On the other hand, who knows what the future holds? We might decide to leave our consumer finance department there. Or perhaps make it available to the public.

Q. Now, to return to our original point, Mr. Fleming, how does all this benefit the community as a whole?

A. I think that a 20-story office building——

[fol. 1417] Q. You are not building that, sir.

A. It's going to carry our name. It's going to be called the Third National Bank Building.

Q. But you have a lease and a few floors of it.

A. That is right. Whether we own it or not, it will be known as the Third National Bank Building. I think such a building in the heart of Nashville, with parking spaces in the basement for nearly two hundred cars, with over a hundred thousand square feet of modern office space available to the public very definitely is a benefit to the public.

Q. That's a very fine benefit that Life and Casualty is providing, I agree with you, sir.

A. Life and Casualty would not be providing it unless we had been willing to lease as much space as we are leasing. Otherwise, it would not have been as good an investment for them as I hope it will be.

Q. Why did you lease that space?

A. Because we felt we needed more modern and bigger space than we have at the corner of 4th and Church.

Q. Now does that result from the merger then?

A. Where the benefit comes there is that this will not only be made available to us, more convenient quarters, but also now will be made available to the ten thousand odd customers of Nashville Bank and Trust Company and their families, and I would say this, that whatever the benefits [fol. 1418] the city of Nashville and certainly a modern office building right in the heart of Nashville is beneficial to the city of Nashville. As a matter of fact, the press has commented many times it might be the beginning of a face-lifting in Nashville like they have had in St. Louis, and Pittsburg, and other cities.

I would say that if that benefits Nashville to that extent, my goodness, whatever benefits Nashville is bound to benefit the customers of the Nashville Bank and Trust Company.

Q. Didn't you testify, sir, that you were moving into these new facilities because your present facilities at—is it 4th and Church Street—were too small?

A. We are occupying five or six floors of the building. What we want to do is to put our various departments closer together and say let most of them be on two floors rather than five or six. It is very inefficient, and it is very

difficult to operate a bank the size of ours spread out in as many different places as we are today in our own building.

My office is on the 12th floor, for instance. Most of the offices are down on the first floor, just the matter of going back and forth between floors takes a lot of time. We have other departments on the second floor, and others on the third floor. It just doesn't call for the most efficient opera- [fol. 1419] tions.

Q. Nashville Bank and Trust Company facilities will be where they always have been, and the people that dealt with Nashville Bank and Trust Company will still be going to those facilities, will they not, sir?

A. Not necessarily. We are finding now that an increasing number of the Nashville Bank and Trust customers are using other of our offices. Of course it has been amazing to me the extent to which these customers now go to our various branches.

Q. What has that got to do with building this new building? I'm trying to find out—if you listen, maybe I can get an answer to my question, Mr. Fleming.

A. I am.

Q. One moment. I'm trying to find out, Mr. Fleming, how in any way this merger brought about the building of this building.

A. You haven't asked me that question.

Q. Well, I'm asking you now.

A. The merger hasn't done anything to bring about the building of this building. You asked me if it would benefit the public.

Q. You told me that these are advantages that grew out of the merger.

A. That grew out of the merger? I said there were advan- [fol. 1420] tages to the Nashville Bank and Trust because they were customers, because they would now be able to use these things which they wouldn't have otherwise.

Q. Are all of these advantages which you pointed out, Mr. Fleming, advantages only to the customers of the Nashville Bank and Trust Company?

A. I would say primarily to the customers of Nashville Bank and Trust Company and their families, but if we use the figure forty thousand, that's ten per cent of the population of Davidson County.

Q. But they are not advantages to the entire community or all of the people in it, are they?

A. In the narrow channel of the way you have worded your question.

Q. Thank you, sir.

In the early part of your testimony, Mr. Fleming——

A. You want me to go ahead with the rest of these then?

Q. No, sir, I think we understand them now.

At the early part of your testimony—

The Court: Read those off.

The Witness: The next ones?

Mr. Minicus: If Your Honor would prefer, I'll be happy to continue through them.

[fol. 1421] The Court: I would like to see what they are.

The Witness: Thirteen was an experienced and extensive credit department which will permit more intelligent handling of loan applications and will guard against undue credit losses.

Fourteen, an efficient auditing department which will offer beneficial operations and give better protection against defalcations.

Fifteen, an extensive correspondent banking system covering a wide area of the south to provide customers of Nashville Bank and Trust with valuable and needed contacts, also the extensive connections of Third National and its offices will be of valuable assistance to the Nashville Bank and Trust Company's customers on a national base.

Sixteen, the extensive management and operating problems of Nashville Bank and Trust have been solved in their entirety. They are the other ones.

By Mr. Minicus:

Q. Now, Mr. Fleming, your conclusion that these things benefited primarily the customers of Nashville Bank and Trust Company also applied to the last five as you have read off, is that not true?

A. Yes, I would say primarily to the customers. However, a banking institution is so much a part of the life of [fol. 1422] a community, so much a part of the area, that anything that benefits a banking institution in a city like

Nashville, I say benefits the entire community. It serves the public interest.

Q. Would you say that that would apply doubly if there were two banks where there was later one?

A. I can't answer that yes or no.

Q. Thank you, sir.

A. I'll answer it, though, if you want me to.

Q. I think you said you couldn't. We'll let it pass.

A. I can't answer that type question though.

Q. Your early testimony addressed the concentration of banking in other cities. What was the source of your information for the statistics cited showing the concentrations there?

A. My source was the American Bank Directory, Spring Edition, 1966, published by the McFadden Publications of Atlanta, which I hold in my hand.

In addition to that, the statistics I used with respect to the 7,700 towns in the United States served by only one bank and 1,800 served by only two banks is a quotation from Governor George Mitchell of the Federal Reserve Board on a speech on March 13, 1966, in San Francisco, at the Bank Presidents and Officers seminar at the Independ- [fol. 1423] ent Bankers Association, and I have a copy of that speech right here.

Q. Did you consult the statistical studies made by the Federal Reserve Board in this regard?

A. I did not.

Q. Thank you, sir.

Now you stated that there was some competition formerly between Nashville Bank and Trust Company and Third National Bank. That was your testimony?

A. I said that—

Q. And you said, however, that you considered that that competition was not significant or substantial.

A. That's correct.

Q. Will you define what you mean when you use the word substantial?

A. I would say the type competition that exists between the First American National Bank and the Third National Bank is substantial.

Q. Sir, how does that differ with the competition formerly provided by Nashville Bank and Trust Company?

A. The type competition we had from Nashville Bank and Trust was an entirely different type. In the first place, as I have mentioned, I considered them to be a different type bank, but what was more important, they were a good customer of ours, and we were constantly trying to gain [fol. 1424] their good will as to where they would do more business with us, and in addition to that, Mr. Hill and Mr. Hackworth and various of their directors like the Cheeks, they served on many institutional boards, Vanderbilt, Meharry, Peabody, you name them, they were on every board in this community, and indirectly could be responsible for business from those institutions to us.

Now the competition which existed was more or less of a one-way street. They did influence from us certain accounts, food nature principally, that they moved down to the Nashville Bank and Trust away from our bank. Not many. Most of them were split accounts. In other words, if we had a bread company or milk company, they got this company to come in and carry a complimentary account with them, but very seldom did we ever solicit any business from them. On the contrary, we sent many accounts to them, or helped them get accounts.

For instance, if a new company would come to town like Gates Rubber or Ford, we would try our best to get them to do some business with the Nashville Bank and Trust as well as with us. It was just the difference between day and night the type competition that existed between us and the Nashville Bank and Trust and exists between us and the First American National Bank and the Commerce Union Bank.

Q. Is it your testimony that you or some representative [fol. 1425] of your bank actually encouraged anyone at Gates to open an account at Nashville Bank and Trust Company?

A. Yes, we—I myself recommended to management of Gates that I thought it would be a good thing for them to do some business with the Nashville Bank and Trust. I recommended to the Murry Ohio manufacturing company—

Q. Who did you speak to—before you pass from that—who did you speak to at Gates?

A. It's my recollection it was Bob Bonham; that's my recollection, but this was five or six years ago.

Q. Is he a local man?
A. No, Denver, Colorado.
Q. He's in Denver?
A. Yes, sir.
Q. Thank you, sir.
A. Would you like for me to go ahead with some others?
Q. Go ahead.
A. Murry Ohio, two of our senior officers on our Board of Directors, we very definitely encouraged them that we thought it was good business for them to do business with Nashville Bank and Trust.
Q. When did you encourage Murry Ohio?
A. I beg your pardon?
Q. When was this encouragement?
[fol. 1426] A. When they came into Nashville.
Q. When was that, sir?
A. Oh, six or seven years ago.
Q. And with whom did you——
A. Mr. Hannon.
Q. Mr. Hannon?
A. Yes.
Q. Is he local or is he out of town?
A. He's local.
Q. Go ahead, sir.
A. Came from Cleveland, Ohio, down here.
Q. All right.
A. Others like the Middlesboro Bank and Trust Company, we very definitely encouraged Mr. Mifrin, the head of that bank to do some business with the Nashville Bank and Trust. It looked like it was to his advantage, because they had one mutual customer, the State Farm Insurance.

We encouraged the Harpeth Bank and the Williamson County Bank at Franklin to do some business. We were constantly—I mention those as a few, Mr. Hackworth was very close friend of ours and so was Mr. Hill, and every time we had a chance, we tried to help them in operating that bank, because they were a real good customer of ours, and I say again it's not the rule of reason to think that any bank that was benefiting to the extent that we were with [fol. 1427] substantial balances from them would want to hurt them. We would want to help them where they would continue doing business with us.

Q. Now why since you have gone to great lengths this morning telling us about the disadvantages of having an account in Nashville Bank and Trust Company, did you recommend to these customers of yours that they go to Nashville Bank and Trust Company?

A. The principal reason I recommended it, I wanted to do something for Mr. Hackworth and Mr. Hill so that they would have as friendly a feeling as possible towards us. The way you build a bank is to try to help your customers. If you can help your customers, they in turn will do more for you.

Q. Were you helping your customers sending them to a bank you considered completely inefficient?

A. I didn't consider them completely inefficient.

Q. Were they efficient?

A. You said completely inefficient; there's a whole lot of difference between efficient and completely inefficient.

Q. Were they inefficient?

A. They were not modern.

Q. Besides modernity, were they efficient?

A. On comparison with efficiency, I would say they were inefficient.

[fol. 1428] Q. Then you did recommend to your customers that by sending them to an inefficient——

A. I did.

Q. You did help your customers by sending them to an inefficient bank?

A. A bank that was solvent and safe; it had nothing to do with the goodness of the bank as to whether they were as efficient——

Q. But you did send your own customers to the bank prior to the merger?

A. Absolutely, no question about it.

Q. Did you not testify that if this bank continued the course it was going, it was going to run into financial difficulties.

A. I did not say financial difficulties.

Q. Then it would not have run into financial difficulties if it continued the course it was on?

A. The fact I didn't say it wouldn't doesn't say I said it would.

Q. Would it or wouldn't it have?

A. I say if they had continued without finding capable and adequate replacement for the chief executive officers, for three of their department managers, and had not brought in younger men on their board of directors, and particularly with the loss of Mr. Hill and Mr. Hackworth, [fol. 1429] they couldn't go but one way, and that was backward. They could not go forward.

Now any bank that isn't moving forward, a bank that's resting comfortably on a plateau is not going to make progress, and in time that bank's earnings would be affected, and that bank would not be as good an institution, as satisfactory an institution to do business with it, and that doesn't mean it's going to fail and anybody is going to lose money.

I just said they were going in the wrong direction, because they had not taken the steps to replace their aging management.

Q. And did you also testify that you considered it an impossible task for them to be able to replace this management?

A. I would say that if any one man had been brought in and given the job of replacing half of their Board of Directors, finding a new chief executive officer, a new chairman of the board, replacing three of the six departmental managers, replacing the principal man that was out soliciting business, replacing the two men who were handling the sales end of one of their most important departments, the real estate, you give that man the task of doing that and not having available a funded pension plan, having low salaries, having quarters that certainly were not modern, [fol. 1430] having very low fringe benefits, not being automated, and a minimum number of branches, I say it would have been an impossible job to have done that under those circumstances.

Q. I ask you again, Mr. Fleming, why did you recommend a bank in such dire straits to your good customers?

A. Again I said to you that they were not in dire straits so far as solvency. The problem with Nashville Bank and Trust was not solvency, they were as solvent as anybody. The problem was what was going to happen to their management.

Q. And if nothing had been done about their manage-

ment, what would have happened to the bank, in your opinion?

A. I don't know. If nothing had been done about the management and started going down hill, I might have recommended to my friends that they move their accounts, but that hadn't happened at that time, and it hadn't happened at the time of the merger.

Q. Do you compete with the Capital City Bank?

A. To a very small extent.

Q. Are they customers of yours?

A. They are customers of ours.

Q. Do you compete with the Citizens Bank and Trust Company?

A. Well, I would doubt it; they are customers of ours though.

[fol. 1431] Q. They are customers of yours?

A. Yes.

Q. Do you compete with the bank at Goodlettsville?

A. If so, to a very small extent. They are located way out on the fringe of the county, and pretty well get their customers in that locality.

Q. Do you compete with the bank of White's Creek?

A. Well, to some extent. You are going to compete with any of them in the same county to some extent, but I can't answer those things yes or no.

Q. Well, is their competition what you would call significant or substantial?

A. No, very definitely not.

Q. Then the only significant competition in this county for your bank must come from Commerce Union and First American?

A. I would say the only significant and substantial competition which we have comes from those two banks. The First American has about thirty-five million dollars more deposits than we do, and the Commerce Union has a branch system throughout Middle Tennessee that makes them pretty tough competitors.

Q. Would it be possible for Nashville Bank and Trust Company, in this city, to have competed with Commerce Union and not have competed with Third?

[fol. 1432] A. Competition can be a two-way street or a one-way street. They could compete with us as they did,

as I say, by getting some of our accounts at times with our full permission, but the question of competition is that we didn't in turn try to get their customers. Our business development people laid off of their customers.

Q. There was nothing they could control, was it, Mr. Fleming?

A. Well, if we——

Q. If they tried to compete and you didn't choose to compete, that wasn't any fault—

A. I would say it was about a fifty per cent situation. Now I can't answer for the other banks, they have had witnesses here, let them answer for themselves.

Q. I didn't ask you to answer for the other banks.

A. I thought you did.

Q. I asked you for your bank.

A. As far as we were concerned——

Q. If they competed with the Commerce Union.

A. They competed with us and we didn't compete with them. If so, it was so small, it was absolutely insignificant. In fact, we tried to help them.

Q. But you do compete with Commerce Union?

A. Absolutely.

Q. And you do compete with First American?

[fol. 1433] A. We hope so; we think we do.

Q. And if Nashville Bank and Trust Company competed with Commerce Union and First American, you did not compete with them, is that correct?

A. Give me that again.

Q. If Nashville Bank and Trust Company competed with Commerce Union and First American, it still follows that you did not compete with them, is that correct?

A. Compete with who?

Q. Nashville Bank and Trust Company.

A. There was competition between the two banks, as I have said, about a dozen times now, to the extent that they competed with us but I didn't consider that we competed with them.

Q. Then this is now reduced strictly to a matter of your consideration or evaluation of the situation?

A. I don't follow you.

Q. On what facts do you base your lack of competition flowing from Third to Nashville Bank and Trust Company?

A. The basis of it was they were a good customer of ours, it was more important to us that they carry the balances which they did with us than for us to try to get some small accounts from them.

Q. Didn't you tell us earlier that you did try to get a lot of these food accounts?

[fol. 1434] A. No, I did not say that. I said that they got them from us by split accounts.

Q. And you made no effort to get them back?

A. I don't know about no effort, but most of the time, they were split accounts. Very seldom did they move an account in its entirety. I would say most of those accounts were bread company or milk company or some producer who would continue to carry its main account with us, but carry a complimentary account with them, that's the way most of them develop. It was a secondary account or third account. We had no objection to that, in fact, a lots of times the money came from outside of Nashville rather than from us. Some of these were national accounts——

Q. These food company accounts in Nashville Bank and Trust Company were second or third accounts as far as the food companies?

A. In many instances, insofar as we were concerned, they could carry substantial——

Q. Then the Nashville Bank and Trust Company did not control the food accounts in this city?

A. They did some of them, I'm not saying that, they had their full share, but you were asking about competition from us. I'm not talking about categorically in Nashville, the accounts they took from us in the main were complimentary accounts from customers who maintained their main accounts from us.

[fol. 1435] Q. You testified, Mr. Fleming, that up to 1946, the Nashville Bank and Trust Company was going along pretty good, and then Mr. Nelson died?

A. Yes.

Q. And this was unfortunate for the Trust Company, and it then hit a plateau that went along for about ten years until Mr. Hackworth came on the scene?

A. That's right.

Q. And after Mr. Hackworth came on the scene, the operations at the bank picked up again?

A. Mr. Hackworth motivated the entire personnel of that bank. He gave them the leadership which they wanted, and which they needed, and the bank moved right out on the basis of that leadership.

Q. Were you in Court, Mr. Fleming when Dr. Wolf testified that in his experience there have often been cycles of up and down in a corporation's history and that the fact of being perhaps presently on a plateau did not mean it was going to last forever?

A. I was here just a short time with Dr. Wolf; frankly I couldn't understand what he was talking about.

Q. You didn't hear that testimony?

A. I heard very little of it.

Q. I don't know whose fault it was you didn't understand [fol. 1436] it, sir, but we won't go into that.

A. I stayed only about half an hour or so of Dr. Wolf's testimony.

Q. Thank you.

A. He was too smart for me.

Q. Now would you repeat for my benefit, sir, what you said about a bank having obligation to the public rather than being primarily interested in profits?

A. Well, I wrote it down. I'll read it to you again.

Q. Thank you.

A. If I can find it. It's in the record. I wrote it down because I didn't want to be misunderstood, and I gave it a lot of thought before I wrote it down.

Q. Then rather than try to paraphrase it, I'd rather hear it from you, sir.

A. The question was what obligation then do you feel commercial banks owe to the public?

My answer was: While a bank, the same as any other business enterprise, operates to make money, its obligation to the public transcends in importance that of a regular commercial operation. In fact, if making money was the only objective, a bank could invest all of its assets in municipal bonds and tell its customers and the people in the community to look elsewhere for such capital as is neces- [fol. 1437] sary to buy automobiles, purchase homes, pay for tuition for children and run businesses for all kinds.

Q. Can we pause there a moment, Mr. Fleming? May I ask you within your experience as a banker where have you

found that your credit yields a higher rate of return in mortgage bonds and municipal bonds or in personal loans and individual borrowing needs?

A. Municipal bonds are by far and away the most lucrative source of income, because they are tax free and it costs you so little to handle them. You buy a bond, you clip a coupon, and you can get a low-salaried clerk to do that. You put them in a vault.

If you are speaking of consumer finance rates, which would average maybe eight and a half or nine per cent based on the discount method in which interest is figured, but it costs us around five and a half per cent to operate our consumer finance department. Therefore, if you take off the cost of your operation against your income, the net return which is taxable would be much less than the return you would get on municipal bonds.

Q. The personal financing you are talking about there is that on the installment basis?

A. Installment basis.

Q. At what rate of interest?

A. I think it averages out eight and a half or nine per [fols. 1438-1442] cent on the discount basis. We don't go into these loans that——

Q. What is the percentage on the face of the note?

A. Oh, it could be five per cent, it could be five and a half. The way that is is interest add-on. If you make a loan to a man for a hundred dollars for twelve months, and you charge him six per cent, it would be a hundred and six; he pays that money back in equal installments, and therefore he has the use only of one half of the money. Now the fact that he has use of only half of the money makes the interest rate, if you figure it on a percentage basis, makes it go up.

Q. And at six per cent, is it your opinion that such a loan only yields eight or nine per cent?

A. It depends on the maturity. I wasn't speaking of a six per cent, I was speaking on what our consumer finance averaged out. Some are flood plans on automobiles, and others are loans that might stretch out for two or three years, and where the interest rates go down proportionately, some might have a balloon note, and so forth, our average, I don't know what the rest of them are, but I

think our average rate of interest is somwhere in the neighborhood of eight and a half to nine per cent.

Q. Eight and a half to nine per cent?

A. Yes, sir.

* * * * * * *

[fol. 1443] Cross-examination. (Continued)

By Mr. Minicus:

Q. There are just a few matters this morning, Mr. Fleming, that I think we can bring out to fill the record so that all of the fact will be before the Court.

There's been some discussion in the case and on your testimony concerning the size of banks, that some in Nashville are large, others are small.

I was wondering, sir, could we take as a classification, a fair classification, as applicable to Nashville, that the First American, the Third National, and Commerce Union are [fol. 1444] considered large banks in this area?

A. I think that would be a fair classification.

Q. And that Capital City, Citizens Savings, White's Creek and Goodlettsville are small banks?

A. Capital City is becoming a much larger bank than the other three that you mentioned. In fact, I would say it's three to four times as large. I would say that Capital City Bank is now approaching the classification of a medium-sized bank.

Q. And that the former Nashville Bank and Trust Company was a medium-sized bank?

A. In the classification of ten million to fifty million dollars of deposits, it would meet that requirement.

Q. Now how is the size of a bank related generally to the type and classes of customers which it serves?

A. A large bank, through its full service facilities can handle any type customer, be he small, medium-sized, or large. A medium-sized bank is able to handle nearly all classifications except the larger ones. A small bank is limited in the size of customer, particularly in the borrowing field.

However, when we say large banks in Nashville, by comparison with the collosals in New York, they would be

classified as very small banks, and cannot do as much for customers, the larger customers, as can those very large [fol. 1445] banks in New York, Chicago, and other big cities.

Q. What does the large bank have to offer the medium or small customer, the man who might run an account either on the deposit or credit side between one hundred and a thousand dollars, that the medium-sized or small bank cannot offer him?

A. A great deal would depend on the facilities. If the medium-sized bank had modern facilities, if it had ample branches, there wouldn't be a great deal that can be offered. However, if the large bank had more convenient locations, had more efficient operation, more modern facilities, I would say that they would be able to offer more in service to the community than would the medium-sized bank that did not have those facilities.

Q. Now what is the nature of the services of a large bank and the services it performs as its outstanding functions, what does a large bank have to offer that is beyond the capabilities of a medium or small size bank?

A. Of course, the raw material of a bank is deposits. Without deposits, you can't make loans, you can't serve your community, you can't offer to the community and area which you serve the multitude of services which commercial banks of any size do offer today.

Now the purpose—one of the principal purposes of a [fol. 1446] bank is to have enough image, to be the type institution, to serve the public in such a way that it can attract deposits. That then gets back to the management. It gets back to the branches, gets back to your efficiency of operation, automation, if I might say, which today is almost an essential.

Now the large bank can offer all of these things and the medium-size bank can't. It is my opinion that the large-sized bank is serving the public interest more than is the medium-sized bank.

[fol. 1447] Q. You mentioned management. Let us turn for a moment to the quality of management. Where would you expect to find in a bank's financial statements good management reflected? I am restricting that question just to the financial aspects of the bank.

A. I don't think cold figures in one balance sheet would reflect the caliber of management. I do think comparative figures over a period of years, both in the balance sheet and in operating statements, would to a certain extent reflect the ability of the management.

It, of course, would not show the age and it would not show the health of the management. It is only a reflection of what has happened, rather than what might be going to happen.

Q. Do you recall, Mr. Fleming, a deposition which you gave the plaintiff in this case on October 21, 1964, in a room in this building?

A. I do.

Q. I show you what purports to be your deposition and ask you, sir, if that is the deposition taken that day?

A. That's correct, it is.

Q. At page 30 of that deposition, speaking of the quality of management as reflected in the financial aspects of the institution, you testified that you would say that the criteria of good management in a bank is first to maintain [fol. 1448] a sound and solvent institution.

A. I still think that, That's one of the criteria.

Q. To be able to earn a satisfactory return on invested capital, which of course means capital surplus and undivided profits; to be able, by comparison with previous years, to show growth and development; to be able to associate with the bank a group of substantial respected citizens of the community.

For just a moment I want to digress and ask you: What is the importance to a bank of the mix of savings deposits to loans?

A. What is the importance?

Q. Yes, to the bank of the ratio of savings deposits to loans.

A. I don't know that that is of any particular importance except that, if you have a large percentage of your deposit mix in savings or time deposits, it means that they are costing you a great deal more money. Therefore it is usually the case that you try to employ that type money into the loan area or into the investment area as to where it will return you as large an amount of interest as possible, or income as possible.

If you are going to have to pay four percent for savings, and after you set your reserves up and pay your FDIC [fol. 1449] insurance, it will cost you about 4.28, you can't turn around and lend that money at the New York prime rate and come out even.

What you would have to do is perhaps go into the real estate field, like the Nashville Bank and Trust did, and try to get the higher rate loans in order to compensate for that.

Also, savings accounts are not as volatile as are checking accounts. A savings bank, for instance, or a savings and loan association, employ maybe eightly, ninety, or a hundred percent of their savings account in long-term maturity real estate loans, thinking that the depositor will not call on them for the money as rapidly as he might in checking accounts.

Therefore I would say—that's all.

Q. Then, considering the mix in a bank, it is important to consider the use of the funds made by management?

A. It is interesting to consider. It is interesting to consider.

Q. But if there is a high degree of savings, a relatively high ratio as you said there was in the Nashville Bank and Trust Company, then it is a reflection of the quality of management, is it not, if they are able to show good profits on that mix?

A. Given any mix of deposits, it is certainly a reflection on management, good or bad, as to how they utilize those [fol. 1450] deposits—which again, I say, are the raw material. That is the important thing in the bank. If you don't get deposits, you are not in the banking business. How they use those deposits to service the community, to help the industry, the small businessman, the individual, and in the final result, what kind of profits they can make on it, would certainly be an indication of the quality of the management.

But profits are not the only criteria, as I have said before, Mr. Minicus. I think a branch has a definite responsibility to meet the needs of the community and area it serves; and profits are a subordinate factor.

Q. Then, the nature of the investments made by the trust

department of the bank: Would that be indicative of the quality of management?

A. Not only the nature, but how much income can you obtain from those investments with safety. The easy thing in a trust department would be to buy Aaa bonds and never have to worry about anything. But I think the trust customer is entitled to certain expertise in the investment field as to where he can get the maximum return consistent with safety.

That is where the line is drawn between astute management of trust funds and run-of-the-mine.

Q. Were the trust department earnings of the Nashville Bank and Trust Company of a somewhat better than satisfactory nature?

[fol. 1451] A. I think the trust department earnings of the Nashville Bank and Trust were extremely small. I have the figures here, if you would like for me to go down them, for the last four years.

Q. I have some of your testimony yesterday, sir. I would like to refer to that. You said that in 1963 the trust revenues for Third National Bank were $331,000, and for Nashville Bank and Trust Company were $265,000. In other words, the revenues of Nashville Bank and Trust Company were somewhat below those of Third?

A. What I mean by revenues, that's the total income received from the services performed by the trust department.

Q. I understand that, sir. Then you went on to say that, in the same year, the net income before taxes at Third National Bank from the trust department revenues was $28,134; and that for the Nashville Bank and Trust Company was $50,976.

A. I said that, and I also stated that the $28,134 earnings before income tax of the Third National's trust department was only .58 percent of the total earnings of the bank before income tax; and that the $50,974 earnings of the Nashville Bank and Trust trust department was only 7.15 percent of the total earnings of that institution before income tax.

[fol. 1452] Q. But does not the fact remain on your testimony that, with substantially less revenue, the net income

before taxes at Nashville Bank and Trust Company in 1963 was almost double that of Third National Bank?

A. According to these figures, that would be the case. However——

Q. These are your figures, are they not?

A. These are our figures, but there is some question in the mind of our comptroller as to whether the Nashville Bank and Trust had charged a sufficient amount of the central overhead of the bank to their trust operation.

Q. Are you challenging your own figures, sir?

A. I am not challenging. The figures I have given are correct figures as far as they go. But, as I say, that is a question in our comptroller's mind, as to whether or not they were weighing enough of the central overhead against those earnings.

We weighed a full percentage of central overhead expense against the earnings of the trust department.

Q. But you don't know that they did not—

A. I do not know. But our comptroller will be on the stand here later, and you can ask him those questions. I know he will be glad to answer them.

Q. In commercial banking what sources for management replacement exist other than promotion from within?

[fol. 1453] A. Employees or officers of other banks, and the whole sphere of business economy throughout the whole United States. It is a free economy. You have a right to try to hire people from anybody else that you can and that you so desire.

Q. Do other local banks sometimes serve as sources for replacement?

A. Over the past twenty-five or thirty years there have been very few cases where one bank in Nashville would employ an officer or an employee from another. In the past three years there has been only one case that I know of. That was Mr. Primm with the First American National Bank.

Q. May I recall your testimony on the deposition which you identified. At page 34 you stated:

> "Unfortunately, that is the case at times. However, it is a very ticklish situation when you start hiring personnel away from your competitors because all you

do is open up the floodgates as to where they come back and try to hire your men, and that creates a very undesirable atmosphere in which to compete and operate."

Is that the reason why there has been so little interchange of officer material between the Nashville banks?

A. I was speaking in the testimony you quoted from in the abstract about banking throughout the country, not confined to Nashville. However, pretty much the same situation [fol. 1454] would prevail anywhere. Certain cities have policies that they go by. They are not absolutely fixed in those policies. But I would say generally that it is not good practice to try to hire away from your competitor people who will come in with certain confidential information that would be a great detriment from a competitive standpoint to the bank which they left.

Q. Would you apply that same reasoning to a bank in which the management was beginning to age somewhat and the need for replacements was apparent?

A. It would depend upon how great the problem was. If I was running a bank that needed replacements, particularly in the higher echelons and the departmental managers, and I couldn't get it anywhere else, I would go to the other banks in the town to try to get it if I could, because I would think that the interests of the bank that I was employed by made such a step necessary.

Q. Do commercial banks often go outside the community in which they are located to bring in new people?

A. They try to, but it is becoming more difficult all the time, particularly because of the higher wage scales and because of the demands that the good people make upon you.

You go out today and try to bring in a man from any other city or small town, and the chances are they are making as much money as you can offer them. They have got [fol. 1455] a considerable accumulation in a pension plan which they would have to give up. You have got to move the ante up pretty high to attract them.

Q. May I recall your testimony in the deposition which you have identified, at pages 34 and 35 in which you said:

"Normally, banks go outside of the community when they want to bring in new people; or, whenever possible, they will employ those not in the banking business. For instance, attorneys or accountants are good sources for bank officers today, particularly those who have had experience in the banking field.

"I will give you an example. Mr. Henry Alexander, who is president of the Mortgage Guaranty Company, he was an attorney representing J. P. Morgan and Co. Mr. Morgan hired him because he was attracted to him as an attorney to come in as a vice-president of the bank, and he went up to the head of the bank after that.

"Many, many times banks will look around to find attractive young men in a community where they have a background and experience. For instance, at one of the larger banks in Dallas, Texas, the man who heads that bank today was head of the Chamber of Commerce."

[fol. 1456] Is that your testimony?

A. Yes, sir.

[fol. 1457] Q. Have there been outstanding examples in Nashville of bank officers being brought in from the outside?

A. Oh, yes. There have been quite a few. Mr. Hackworth of course was president of the NC&St.L Railroad, took early retirement to accept the presidency of the Nashville Bank and Trust, but he had been a director of that bank for ten years, and had considerable knowledge regarding the operation of the bank.

Mr. Yearwood, a man of considerable means had been in the contracting business all of his life, very successfully. He organized the bank, the principal stockholder, and is president of that bank today and doing extremely well with it.

Commerce Union has brought in several people, usually for a particular position. For instance, Mr. Saffley was brought out of the newspaper field in order to specialize in agricultural matters. That was his forte over in the newspaper business.

They brought another man in from the Industrial Development Department from the State of Tennessee, to organize and head up an Industrial Development Department.

Usually when you bring a man from the outside, it is to fill a particular need of the bank, where that man's experience and talents make him particularly qualified to fill that position.

[fol. 1458] Q. Have there been any instances of this at Third National Bank?

A. Yes; we have brought in over a period of the last twenty years several people. We brought in a man from the life insurance field to head up solicitation of wills in our trust department.

We have recently brought in a young man who was with the FBI to come into our trust department. He has spent the past year trying to familiarize himself with trust matters, and we feel that his law degree and general knowledge will be of help to us in a particular phase of that operation.

A bank the size of ours with nearly six hundred employees, always is finding some particular need for a man of particular talents. For instance we were able very fortunately, I think, to get Judge William Wade, who had been a Chancellor in Nashville for over twenty years to come in as a trust officer in our bank, and he performed a very great service, but the work that he had been doing in the Chancery Court just fitted in with what we wanted him to do in our trust department.

Q. And I believe the man who presently heads up your trust department, Mr. Leroy Austin, did he not come from the New York area originally?

A. No, he came from Lexington, Kentucky.

Q. I mean originally.

[fol. 1459] A. No, he was raised in East Tennessee and went to the University of Tennessee.

Q. And Mr. Austin was not a native of New York City or spent a great deal of time there?

A. I never heard of it. As far as I know, he was raised in East Tennessee, graduated from the University of Tennessee, and left us to go to Evansville, Indiana, and went from there to Lexington, Kentucky, and we brought him back home, and have been very glad we could get him back home, but he had been with us for quite a few years before he ever went—I guess you would call Evansville, Indiana, north.

Q. I would appreciate it if you would check that with Mr. Austin and if your information is mistaken, let us know?

A. I'll be——

Q. And if mine is mistaken, I'll apologize.

A. I'll be happy to. I'll be glad for Mr. Austin to appear as your witness if you want him to.

Q. That's entirely up to Mr. Farris, I suppose.

A. I think my information is correct, sir.

Q. Yes, sir.

Now are all of the officers who were formerly with Nashville Bank and Trust Company, excepting those that you designated the other day as having died or retired or resigned, presently integrated into the operation of the Third [fol. 1460] National Bank?

A. All who are still left with the organization are integrated in it. However, we are still operating the Nashville Bank and Trust to a certain extent as a separate entity, an entity as a part of the whole.

As I have mentioned before, that we told this Court at the beginning of this litigation, that we would do our very best to make as few changes as possible, the Nashville Bank and Trust, the location, and so forth, until after this litigation is settled. That's what we have tried to do.

Q. Now these people have been working with Third National Bank for almost two years. Have they proven competent in their present assignments?

A. Yes, we think that we were able to get some extremely good men.

Q. What are the duties of Mr. Overton Thompson today?

A. Mr. Overton Thompson today is the manager of the commercial banking end of the Nashville Bank and Trust office of the Third National Bank.

Q. Does that mean that he is largely responsible in overseeing the operations of the entire branch of the Nashville Bank and Trust Company branch of the Third National Bank?

A. He has been given the authority to operate the bank-[fol. 1461] ing end of the Nashville Bank and Trust office working with the various loan and other committees which the overall bank has in operation.

Mr. Minicus: I now request that the deposition that Mr. Fleming has identified be marked for identification.

The Court: All right, let it be marked.

Mr. Minicus: I would suggest it be marked 640 for identification.

(Plaintiff's Exhibit No. 640 was marked for identification.)

By Mr. Minicus:

Q. In your testimony yesterday, Mr. Fleming, which is now inscribed at page 1336 of the transcript of these proceedings, you testified:

> "To me it is just not the rule of reason to believe that a bank would compete substantially with one of its good customers."

A. I still say the same thing.

Q. Now you also testified with regard to certain financial institutions other than commercial banks. Are not a substantial number of the customers at Third National Bank mortgage companies, finance companies, insurance companies, security houses?

A. We have a great many customers in those fields.

[fol. 1462] Q. J. C. Bradford and Company, what is their business, sir?

A. Investment banking business.

Q. Do you know offhand their line of credit?

A. Our legal limit.

Q. Thank you. And the CIT Financial Corporation, are they a customer of yours, sir?

A. Yes.

Q. And what is their business?

A. They are in the finance field, consumer finance field.

Q. And do they have a large line of credit?

A. They do.

Q. Commercial Investment Company, what is their business, sir?

A. They are in the finance field.

Q. And is their line of credit extremely large?

A. Not large, no.

Q. Now I'm not talking about Commercial Credit, I'm talking about Commercial Investment Company.

A. CIT?

Q. That isn't CIT.

A. You just asked me Commercial Credit.

Q. CIT is on there, and you said they had a large line.

[fol. 1463] A. But you had Commercial Credit next.

Q. No, I said Commercial Investment Company.

A. Commercial Investment Company, I don't——

Q. Maybe this will refresh your recollection. I show the Exhibit, Government Exhibit 616.

A. Oh, yes, I know who they are. Yes, they do. I know who you are talking about now.

Q. And General Motors Acceptance Corporation are they a customer, sir?

A. They are, have our legal limit.

Q. The Murphree Mortgage Company, are they a customer at Third National Bank, and do they have a large line of credit?

A. They do for the purpose of carrying mortgages which they make to develop the housing and real estate industry in this section.

Q. Now the National Life and Accident Insurance Company, are they a customer at Third National, and do they have a large line of credit?

A. They are a customer of ours, and we give them our legal limit, and they haven't used it.

Q. To avoid my going through all of this, are there a substantial number of others?

A. Forty or fifty, I'd say.

Q. Thank you, sir.

[fol. 1464] A. And I might add that a great number of these are outside of Davidson County.

Q. Yes, sir. Of those that I read to you, sir?

A. Oh, yes. General Motors is, CIT is.

Q. But they all have local offices?

A. They have local offices, but our dealings are with the home office, Detroit, New York.

Q. But you only do business with the local office?

A. Oh, no, most of the lines of credit are set through the home office, with the treasury department.

Q. Now those lines of credit we spoke about, that is a reflection of the credit function of the bank, is it not, sir?

A. Credit and deposit function. We extend a line of credit——

Q. But the lines of credit refer to how much they can borrow?

A. How much they can borrow, but one of the requirements of a line of credit is that they maintain compensating balances.

Q. But these people are large credit customers for the bank?

A. Potential credit customers. Some of the lines of credit like the National Life have never been used.

Q. But how about the finance companies? Are they pretty [fol. 1465] generally used?

A. Not as much as you would think. They probably borrow half of the time, the large ones.

Q. Now when you spoke of the Nashville Bank and Trust Company as a customer, you were speaking there of a customer that was almost entirely a deposit customer, is that correct, sir?

A. Yes, to a very large extent, that was the relationship. However, as I have mentioned before, the influence and connections which Mr. Hackworth, Mr. Hill, the Cheeks and others had were of importance to us.

Q. Yes, sir. Now you testified in connection with a probate study that had been made that in 1963, 871 wills and 343 intestates had been appointed, and of the total of 871, 69 were served by commercial banks.

Let me ask you, do you agree with the testimony of an employee of Third National Bank who on Tuesday stated that the 69 served by banks in Davidson County were the only corporations exercising trust powers and that the remaining executors and administrators in that number were individual persons?

A. I wouldn't feel competent to answer that, because I haven't made the survey.

Q. Do you know of any other corporations in Davidson County exercising trust powers other than commercial [fol. 1466] banks?

A. Offhand, I would not. However, as I say, I don't feel that I am qualified to speak categorically on that matter.

Q. Thank you, sir.

Now you further testified at page 1368 that Third National Bank received twenty-four appointments in 1964, and that Nashville Bank and Trust Company——

A. 1964 or '63—'64, all right. Excuse me.

Q. And that Nashville Bank and Trust Company received twenty-five appointments operating about seven and a half months of that year?

A. I didn't say seven and a half months. I'm not sure as to whether that twenty-five wouldn't have carried over after the merger to those estates that had designated the Nashville Bank and Trust. I'm not clear about that.

Q. We have no information to that?

A. I don't have that information. It is entirely possible that it would also cover the remaining four and a half months.

Q. Is it the substance of your testimony as it now appears on page 1355, that by most standards, the trust departments at both Nashville Bank and Trust Company and Third National Bank were approximately the same size?

A. Approximately.

[fol. 1467] Q. Now we have already discussed your testimony concerning the trust revenues of the two banks for that time, the revenues at Nashville Bank and Trust Company being somewhat below and the net income before taxes being considerably higher, you recall that testimony, do you not, sir?

A. Yes, but when you say considerably below, I would like to point out that in comparison with the overall revenue of both banks, they were very small. You could say that two dollars is only half of four dollars, but two dollars as compared with a hundred dollars is only two per cent, so if you are going to use comparisons between the two, I don't think they are meaningful.

Q. But Nashville Bank and Trust Company wasn't quite that small, wasn't it about eleven per cent, sir eleven and a half per cent?

A. I was only using the illustration. I can give you the exact figure as I have testified, but their percentage of overall income was considerably greater than the percentage of ours to overall income.

Q. Now at the time that Third National Bank was considering merger with Nashville Bank and Trust Company, what department at the Old Trust Company was considered to be its most valuable asset?

A. Well, it would be rather difficult to say one depart-

ment was so much more valuable than another. The com-
[fol. 1468] mercial banking department with deposits of around forty million dollars certainly had to be important. The trust department with the book value of some eighty million dollars was certainly important. The real estate operation that they had was extremely important to their operations. In fact they had specialized in that field, and they ran a department where they rented houses and sold real estate just like they were a real estate dealer. We have discontinued that now, because we didn't feel that we ought to compete with our customers in that field.

There were many segments of the bank and to point out and say one was all important as compared with another, I couldn't say. So far as size, the trust department was important, but so far as earning capacity, it was almost nil.

Q. It was eleven and a half per cent.

A. The income was eleven and a half per cent of a certain figure, but anyway, but the total net income was fifty thousand dollars, and take the taxes off, you've got thirty thousand. Now you couldn't run a bank very long on that kind of income.

The trust departments of both banks might be considered as a loss leader. You couldn't make any money out of them. We were giving a service with them.

[fol. 1469] Q. Then you did not consider the trust department as one of the outstanding assets?

A. If, as Professor Wolf said, the main objective of a bank is to make money, I would say decidedly they were not an important asset.

Q. Is that the reason why, sir, in the advocation forwarded to the Comptroller of the Currency there is almost no reference to the trust business of either institution?

A. We were answering questions which the Comptroller of the Currency told us had to be answered if we were going to file an application for a merger. What we tried to do to the best of our ability—and it took 189 pages to do it—was to answer those questions.

Q. Is there any fairly adequate description of the trust operations in that application?

A. I really couldn't recall. I haven't looked at that application in over a year.

Q. I hand you the application, sir. You testified as to

extremely great knowledge with regard to it yesterday. Will you indicate to me where the trust information is made available to the Comptroller?

A. I testified that I had great knowledge at the time that this was drawn up; but this was drawn up two and a half years ago, and I would have to spend a lot of time——

Mr. Farris: I object to this line of questioning because [fol. 1470] of the fact that the application speaks for itself. It is information prepared sometime back. What he is really doing is testing the memory of the witness. I don't think the memory of the witness is involved here.

Mr. Minicus: The application does not speak for itself, Your Honor. The application says nothing. That's what I am trying to establish. As far as the memory of the witness is concerned, the witness has the application before him, and he testified as to a great deal of experience with it.

The Court: It might expedite matters if you would point out where it is, if you know.

Mr. Minicus: I can't find it, sir.

The Witness: I would answer it this way. If one of the questions which the Comptroller—if the Comptroller failed to stress the trust department in the questions which he wanted answered, it would be only natural because at that time the trust operations of a national bank were supervised by the Federal Reserve Board rather than the Comptroller.

It is only within the past year that the Comptroller has taken over the supervision of trust departments.

It would be my presumption that maybe the Comp- [fol. 1471] troller, since he was not supervising the trust departments, didn't feel that it was important that we include that in our application. But I don't know.

By Mr. Minicus:

Q. I don't think the Comptroller excluded trust departments more than he did any other phase of the banking——

A. The Comptroller at that time, Mr. Minicus, did not have the authority for supervision of the trust departments of national banks. That was the responsibility of the Federal Reserve Board.

Q. But it was also a factor to be taken into consideration as part of the business in considering the effect of this merger, was it not, sir? He was not supervising the trust department; but he wanted to see what the relative positions of the banks were.

Mr. Farris: If the Court please, I object to asking this witness what the Comptroller wanted to see. He has testified that he answered the questions. I think that is sufficient answer to this line of questioning.

I object to the whole line of questioning going any further.

Mr. Minicus: He has testified, Your Honor, as to the functions of the Comptroller in this regard, the reason for the application, and the fact that he actively engaged in [fol. 1472] its preparation. I don't see anything wrong with it.

The Court: I think it is competent; go ahead.

The Witness: You said go ahead?

The Court: Yes.

The Witness: Let's put it this way. We were interested in merging with the Nashville Bank and Trust. Our board had approved doing so. The stockholders had ratified it.

I then went to the Comptroller and I told him we would like to file an application; what information did he want? He gave us a long list of questions which he wanted us to answer.

We tried to the best of our ability to answer those questions. Now, I am not trying to presume what the Comptroller wanted and what he didn't want.

But, if I had been the Comptroller of the Currency and I did not have the responsibility of supervising the trust operations, I don't think I would have been particularly interested in what was happening to the trust field.

Another field agency, the Federal Reserve Board, had that responsibility. Their examiners came in and examined us. I presume that their examinations were available to the Comptroller. I presume that he had all the information that he felt was necessary from reading [fol. 1473] the examination reports of the Federal Reserve Board without asking us to give him information in a field over which he had no responsibility.

By Mr. Minicus:

Q. Do you know that the examinations from the Federal Reserve Board were before the Comptroller in this matter?

A. I do not know, but I presume. I thought any federal agency, including the Justice Department, could go to any other and get all the information that was available.

Q. I would like to clarify one part of your testimony just made. You stated that the Comptroller at this time did not have the obligation of regulating the trust department, but does this application call for, as a matter of regulations of trust departments, or to evaluate the effect of a merger?

A. To evaluate the effect of a merger. But, on the other hand, the Comptroller had available to him, Mr. Minicus, all of the examinations of the Federal Reserve Board. I presume he had available to him all of the examinations of the Federal Reserve Board, and undoubtedly he thought that was sufficient information.

If the Federal Reserve Board was competent in carrying out their responsibilities, I don't see why there wouldn't [fol. 1474] have been sufficient information. In fact, I think it would have been very authoritative.

Q. I show you, sir, Government Exhibit 579, which is a letter from Mr. Hackworth containing enclosures, and ask you whether you have seen this letter and the enclosures before?

A. Yes, sir, I have.

Q. Now I show you Government Exhibit 578, which bears what purports to be your signature, sir, and ask you if that is your letter to Mr. Saxon?

A. That seems to be a copy of my letter to Mr. Saxon.

Q. What is the date of Government Exhibit 578, which is your letter to Mr. Saxon?

A. June 16, 1964.

Q. And what is the date of Government Exhibit 579, which is Mr. Hackworth's letter?

A. June 16, 1964.

Q. Will you turn to 579, Mr. Fleming, please.

A. That is Mr. Hackworth's letter, is it?

Q. Yes, sir.

A. All right, sir.

Mr. Farris: If the Court please, if he asks this line of questions, he will have to make him his own witness, we insist, because this goes beyond direct examination.
[fol. 1475] Mr. Minicus: I think not, Your Honor.
The Court: I don't know what it is.
Mr. Farris: That is his own exhibit.
Mr. Minicus: I will connect it up on cross-examination. It is already in evidence.
The Court: You will have to go further for me to see the nature of it. I don't know what the question is.
Mr. Minicus: Do you want me to tell you what I am leading up to?
The Court: I want you to ask the question so I can see what it is.
Mr. Minicus: Pardon me, sir?
The Court. What is the question you have put to the witness?
Mr. Minicus: I have only asked him to refer to a particular part of the letter.
The Court: He has referred to it. Now, what is the question?

By Mr. Minicus:

Q. I would ask him to read paragraph 2 of page 3 of Mr. Hackworth's letter.

The Court: Paragraph 2 of page 3? What is the subject matter of that paragraph?
[fol. 1476] Mr. Minicus: Of that paragraph? It simply states that he has—shall I read it?
The Court: Just state what it is.
Mr. Minicus: It's a statement that the bank has felt the effect of competitive activities, and they have attached certain exhibits to the letter to substantiate that statement.
The Court: Now, the question which you will ask the witness, based on reading this paragraph? What is the question? The exhibit is already in evidence and the Court can read the letter without having the witness read it to the Court.
Now, what is your purpose?
Mr. Minicus: I want to connect this letter up, and

Mr. Fleming's letter, with certain exhibits that are attached to Mr. Hackworth's letter. I simply want to show the connection, the knowledge.

The Court: It is still pretty nebulous to me, but go ahead and we will see. You want to connect it up? I don't know what you mean by that. I don't even know the subject matter.

Mr. Minicus: I want to connect Mr. Hackworth's letter and the attachments to Mr. Fleming's letter.

The Court: You want to attach them to it?

Mr. Minicus: No, I want to connect his knowledge of [fol. 1477] Mr. Hackworth's letter and the attachments. I want to show that Mr. Fleming had knowledge of this letter and the attachments.

The Court: That's a different proposition. Go ahead. I think that's competent. You mean had knowledge at the time? Is that what you mean?

Mr. Minicus: Pardon me?

The Court: Contemporaneous knowledge, or now? What do you mean?

Mr. Minicus: At both times—contemporaneously and now.

The Court: All right, go ahead.

By Mr. Minicus:

Q. What was Mr. Hackworth's statement to Mr. Saxon in paragraph 2 of page 3?

A. "In our trust department we have also felt the effect of our competitor's activities as evidenced by Exhibit No. 3 attached hereto."

Q. Will you please turn to Exhibit 3 of Government Exhibit 579?

A. Yes, sir, I have it before me.

Q. Will you describe the contents of that, sir?

A. It is a memorandum dated June 15, 1964, to Mr. Hackworth from Mr. Parker. "We have made a count of accounts enclosed and of wills withdrawn from the files since March [fol. 1478] 12, 1964. The totals are as follows: Eight trusts and guardianships closed, totals approximately $151,000. Five agencies closed, totals approximately $2,894,000. Twelve wills withdrawn, total assets estimated at $4,187,500."

Q. Of the items there specified, which ones were income-bearing to the bank? There are agencies, wills, and I believe estates and guardianships.

A. Trust guardianships and agencies would be. Wills would only be a potential source of income.

Q. That shows the terminations and withdrawals in the trust department from the period March 12, 1964, to June 15, 1964. Is that correct, sir?

A. According to this memorandum, it is.

Q. Now, sir, I show you Defendant Banks' responses to Interrogatory No. 13, the question of which was: "State the names and addresses and businesses of each customer maintaining a trust department account or accounts with Nashville Bank and Trust Company who terminated or withdrew from Nashville Bank and Trust Company subsequent to January 23, 1964, and prior to August 18, 1964." And for each such termination or withdrawal, certain information is specified to be designated.

I ask you, sir: Is this period to cover a greater period of time, but inclusive of the period in Mr. Parker's——

[fol. 1479] A. It is perfectly obvious that the period from March 15 to August 18 would cover a longer period of time than March 15 to June 15.

Q. Are the terminations the same in each of those exhibits?

A. Do you want me to read something? Are you asking me to read from somebody else's document, that I do not accept any responsibility for?

Q. I didn't ask you to accept any responsibility for it except your bank gave it to the government as a response to an interrogatory.

A. Our bank did?

Q. Yes, sir.

A. On June 15 there was no merger consummated.

Q. This is the interrogatory I am speaking of.

A. Which are you asking me about, now? The June 15 you have asked me to describe had no connection with our bank at the time it was given. I do not accept any responsibility for it.

Q. But did you not forward this letter to Mr. Saxon, together with your letter?

A. I did.

Mr. Minicus: That's what I was trying to establish, Your Honor.

The Witness: If I might mention this to you, I think [fol. 1480] what Mr. Hackworth was attempting to do was to prove the statement that he had made, that beginning with the announcement of the intent to merge, the First American Bank and the Commerce Union Bank sent teams of solicitors out to try to get all the business from the Nashville Bank and Trust they could. He was trying to show here that they had been pretty successful insofar as the trust department was concerned, as well as the banking department.

By Mr. Minicus:

Q. That inroads were being made upon the trust department business?

A. I would say that if eight trusts and guardianships, five agencies, and twelve wills within a period of three months had been moved from the Nashville Bank and Trust to either of the First American or the Commerce Union—that is where they were moved—I would say that that's pretty successful solicitation and pretty active solicitation.

Q. Now then, in light of that statement, I invite your attention to Interrogatory No. 12 and ask you what the statement of Third National Bank was in response to that interrogatory as it is marked there at 12.

A. Whose interrogatory was this?

Q. This is the response of the Third National Bank.

[fol. 1481] A. Who at the Third National Bank? I am not familiar with what you are talking about here.

Q. I am just asking you, sir, to tell us what the response of your bank was.

A. All I am doing is reading from what it says here, "Answer to Interrogatory No. 12. Listed below are the dates of opening, type and total asset value of each department trust account of Nashville Bank and Trust Company opened subsequent to January 1, 1963, and prior to August 18, 1964."

In doing that, Mr. Minicus, I again call to your attention that neither I nor anybody else at the Third National Bank had any connection whatsoever with the Nashville Bank and

Trust before the merger, and this covers a period before the merger.

Q. I call your attention——

Mr. Farris: If the Court please, I would like to object here because the final Interrogatory by the Government asked for a list of the persons who prepared the answer to each Interrogatory. Counsel knows that Mr. Marvin Sory prepared the answer to this Interrogatory, and I think if he wants to cross-examine someone about it, he should call the man who prepared the answer, and not someone else.

Mr. Minicus: I submit, Your Honor——

[fol. 1482] The Court: This is the application for the merger?

Mr. Minicus: No sir. This is an Interrogatory.

Mr. Farris: He is talking about an Interrogatory there.

Mr. Minicus: Filed by the witness's bank, the bank of which he is president. I am simply asking him as to the information which he gave or his bank gave to the government, and I believe as president of the bank he is responsible for the contents of that Interrogatory.

The Court: In a sense he is, that's true. But I think he can testify whether he is familiar with this answer. The person who actually prepared the answer and gave the data and information would know more directly about it.

Mr. Minicus: That is true, but I am not asking his recollection, Your Honor. I am only asking him what is now in the Interrogatory as it is before him, with regard to the information he gave.

Mr. Farris: It speaks for itself, if Your Honor please.

The Court: It speaks for itself. The answer to the Interrogatory speaks for itself.

Mr. Minicus: But now, I am trying to draw a compar-[fol. 1483] ison between the information that was given to the Comptroller and what wasn't given to the Comptroller. This shows a three-page itemization of accounts opened in the bank, in the trust department, at the time for about a year before the merger, up to the date of the merger.

Some of these trust accounts are over a million dollars that were opened in that bank. They have submitted to the Comptroller, as I pointed out, about six estate accounts that were closed. They were all the accounts of one family

as the document shows—the Potter family—and Mr. Potter got an appointment at Commerce Union, so the family took their account over there. That's clear.

Now, there is no information given to the Comptroller on these three pages of accounts that they picked up at that time, which so far outweighed the business that they lost that there is no comparison.

Some of these accounts are $500,000 up to $1,000,000.

Mr. Farris: I submit that this is argument that may be made at some proper time, but not proper cross-examination of this witness.

Mr. Minicus: Is he denying that Mr. Fleming is responsible for the activities of that bank or what was sub-[fol. 1484] mitted to the Comptroller or what was submitted on sworn statement to the government?

The Court: The application, I assume from your statement—of course I haven't looked at it—does not contain this information.

Mr. Minicus: The application does not contain it, nor does any subsequent information given the Comptroller that we have found. That was my question. Is there any other in existence to the Comptroller?

The Court: What puzzles me, though, is your going about it in this way. You can read the application to the Court and point this out to the Court without using this witness as a vehicle for that purpose.

Mr. Minicus: Before I do that, I would like to ask the witness, Your Honor, if there was any other information available that shows that this was given to the Comptroller.

The Court: All right, I think that would be proper.

The Witness: What is your question?

By Mr. Minicus:

Q. Have you any materials or documents that were submitted to the Comptroller in the few months prior or while he was considering your application that shows the gain in trust business recorded there at Nashville Bank and Trust [fol. 1485] Company?

A. I couldn't say emphatically yes or no, but I presume no, based on your question.

Q. You would know, sir. I don't know.

A. I wouldn't presume that this information is in the application. This says it is not. What is the next question? Let's just suppose not.

Q. I simply want you to direct the Court and myself to any information submitted to the Comptroller which shows the gain in business at the Trust Company during that period.

A. I don't mind answering that. Reading from these figures that you have placed in front of me, it shows the business that came to the trust department of the Nashville Bank and Trust from January 8, 1963, to July 5, 1964. I again state that that was before the merger, and these figures were prepared, and I am confident they were prepared accurately, by the staff of the Nashville Bank and Trust.

But we at Third National Bank, and in particular myself, had nothing to do with this bank during that period.

Now, some of these amounts here are large. For instance, on July 24, 1964, bond trustee, $1,000,000. Well, if a bank serves as a trustee for a bond issue, it might have gotten $1,000 fee for doing that. That would be a pretty good-sized fee.

You say a million dollars, and the question in my mind is, [fol. 1486] what is the responsibility for handling that piece of business, and how much income do you get out of it?

You go down here. Bond paying agent, 3,490,000. I don't know, Mr. Minicus, whether you are familiar with what your responsibilities are as a paying agent. All you do is, the ones that owe the bonds send in the money to you, and you pay out the interest to the coupon holders.

The services are routine; no responsibility of any kind involved in it. The fee that is paid to the bank is very small. In fact, I think too small.

As I look over this list, I am not at all impressed with the profitableness of the type of business that came to them. The size might look big, but what significance is it of a $3,490,000 piece of trust business if it is only a bond paying agency?

Mr. Minicus: May I question him further on this document, Your Honor?

The Court: All right.

Mr. O'Malley: If the Court please, I would like to call attention to one thing. Mr. Minicus has been referring to three pages of accounts. There are exactly seventeen ac-

counts in those three pages which fell within the time period of Mr. Hackworth's letter, specifically in Mr. Hackworth's letter.

Mr. Minicus: I intended to bring that out, but I haven't [fol. 1487] been permitted to question on this. You just be patient and I will get to it, Mr. O'Malley.

Mr. O'Malley: I am very patient, Mr. Minicus.

Mr. Minicus: As soon as your side lets me start the question, we can bring the whole thing out.

Mr. O'Malley: Thank you.

By Mr. Minicus:

Q. You said that you would like me to restrict myself to the time period. Let's start with June 17, 1964.

Mr. O'Malley: Objection, Your Honor. It is June 15, 1964, that Mr. Hackworth's memorandum contains the date.

Mr. Minicus: All right, I said June 18, 1964.

Mr. O'Malley: That's outside the period.

Mr. Minicus: It is?

Mr. O'Malley: It's after June 15, unless I have forgotten how to read the calendar, Mr. Minicus.

Mr. Minicus: I am sorry. We will go in the other direction, then. I really don't see that the objection is material, but I want to keep Mr. O'Malley happy.

Mr. O'Malley: Thank you.

By Mr. Minicus:

Q. We have an estate. Is that a profitable piece of business, Mr. Fleming, on March 13, 1964?

[fol. 1488] A. Was it an executorship?

Q. It's an estate in the trust department.

A. What type?

The Nashville Bank and Trust was serving as executor, or serving as agent?

[fol. 1489] Q. All right, let me read them off as you made them available to the government, and you can explain them. On March 13th——

A. You can read them off, but—

Q. There was an estate of $31,449.00.

On March 25, 1964, there was an estate of $198,667.

On April 14, 1964, there was an estate of $167,848.
On April 27, 1964, there was an estate of $40,000.
On May 26, 1964, there was an estate of——

Mr. O'Malley: Objection.

Mr. Minicus: There was an estate of $48,000.

Mr. O'Malley: May 26—I'm sorry, Mr. Minicus. I forgot the calendar.

Mr. Minicus: And furthermore, I see no reason why there should be this limitation in dates. I'm just trying to make Mr. O'Malley happy.

The Witness: For the sake of time—

The Court: We are wasting a lot of time trying to make everybody happy.

Mr. Minicus: I withdraw it, I simply submit that on the witness' testimony, there was a great deal of testimony that was not given to Mr. Saxon.

[fol. 1490] The Witness: May I speak for myself?

Mr. Minicus: I'm finished.

The Witness: You were quoting me, but I would like to speak for myself.

Mr. Minicus: That's up to the Court.

The Court: On this last observation you made?

The Witness: Yes, sir.

The Court: All right, go ahead.

The Witness: I do not know whether these estates we serve in this capacity are intestate or under a will. I would assume under a will.

A trust department that had been in business for seventy-five years, naturally, had many people who have named that trust department under their wills. Therefore any service as executor or administrator between the period of March 15 and June the 15th would have been the result of somebody who had written a will perhaps long before, who had—and had named the Nashville Bank and Trust and had died in that interim. Therefore, I would say the period March the 15th to June the 15th had absolutely nothing to do with what was happening in the bank. It was the result of what someone had done a month, a year, ten years or twenty years before.

The Court: All right. Is that all?

[fol. 1491] Mr. Minicus: I would like to terminate it on

that note with the single exception to ask you about guardianships, sir.

By Mr. Minicus:

Q. Are there also——

A. Guardianships are very unprofitable and something as a rule we don't like to take. They are very disagreeable things. Sometimes we have to take them at the request of a Court or at the request of a friend, but normally, it isn't anything we seek after in the trust field.

Q. Personal trusts?

A. Personal trusts can be profitable and also be very unprofitable. If a personal trust includes a lot of real estate, rental houses, things of that kind, it is something we would much rather not have.

On the other hand, if you have got it all in National Life stock or American Telephone, it can be a very nice personal trust.

Q. Then will you explain to us, Mr. Fleming, why when you specifically and emphatically, through Mr. Hackworth, drew Mr. Saxon's attention to some wills that had been withdrawn, that had no value at the moment, and to other matters you said had no value at the moment, did you not draw Mr. Saxon's attention to this great increase of business denoted in this interrogatory?

[fol. 1492] A. It's my opinion, from conversations with Mr. Hackworth, that the purpose of that exhibit was to show that during this period of uncertainty, that the Nashville Bank and Trust was under great pressure from the competition of the First American Bank and Commerce Union Bank whom he stated, and whom I think other witnesses have stated, sent out teams of solicitors trying to get all of the business they could from the Nashville Bank and Trust including trust business during this period of uncertainty.

Now, Mr. Minicus, it is very unusual that a bank would lose one piece of trust in an entire year to another bank in this town. It is extremely unusual in a period of ninety days that that much trust business would be transferred from the Nashville Bank and Trust to other banks in Nashville. Certainly there must have been a reason for it, and the only reason could have been confusion created by the uncertainty and perhaps by the solicitors.

Q. Are you—do you know the identity of the Potter family?

A. Certainly.

Q. And was a member of the Potter family appointed in a managerial capacity to the Commerce Union Bank?

A. You mean during that period?

Q. Pardon me?

A. During that period?

[fol. 1493] Q. Or before or about that time?

A. As far as I know, the two Potters, Edwin Potter and Charles Potter, one of them have been there since the inception of the bank, and one of them for twenty years.

Q. Were all of the people in that exhibit by Mr. Thompson members of the Potter family?

A. What exhibit is that, sir? I don't know what you are talking about.

Mr. Farris: Just to save time, I think the family he refers to is the Nelson family, and I think that would clear it up and shorten this a little.

The Court: All right, is that correct?

Mr. Minicus: All right, I will correct it to the Nelson family, sir.

The Witness: That's entirely different.

By Mr. Minicus:

Q. Yes, sir, I stand corrected on that. It was the Nelson family I was speaking of.

Now were all of the accounts in response to your interrogatory of lost business connected with the Nelson family?

A. Who are you talking about, the Potter or Nelson family?

Q. I just said the Nelson family, sir.

A. All right, I just want to get it straight. We have spent [fol. 1494] a lot of time on the Potter family already.

Q. I don't want to waste your time, sir.

A. Now what is your question?

Q. I have asked it for the third time, and you keep asking questions back. I'll try once more.

A. I'll try to answer.

Q. Are all of the people listed in response to interrogatory 13, a., b., c., and d., Mrs. Charles Nelson in a., b., c.,

and d., is Mrs. Mary E. Nelson Burch, are they members of the Nelson family?

A. Indeed they are.

Q. And these are the only accounts that you designated to the government were withdrawn from the Nashville Bank and Trust Company during this period?

A. I don't know what you are reading from, but just—

Q. I'm reading from your own interrogatory.

A. You mean it was only two? I though it was about twelve or fourteen you were talking about.

That's two out of what, twenty that we mentioned a minute ago.

Q. No, sir, we never mentioned twenty. This is what your bank informed us was the business that was terminated.

A. These two are Mrs. Charles Nelson and Mrs. Mary E. Nelson Burch. I presume that be understandable because [fol. 1495] Ed Nelson, Mrs. Charles Nelson's son, went into the Commerce Union Bank as a vice-president. I think it would be only natural that the family business would follow him.

Q. Is there a designation of any other family that was withdrawn or left the trust department of the Nashville Bank and Trust Company during that period?

A. Not in this question thirteen.

Q. And is this your response to our interrogatory, sir, the bank's response?

A. It must have been. I can't say——

Mr. Minicus: Thank you, sir. We could go on forever.

The Court: All right, anything further of this witness?

Mr. Farris: Very briefly, Your Honor, I think we should cover some of the questions.

The Court: All right.

Redirect examination.

By Mr. Farris:

Q. Now, Mr. Fleming, I believe this exhibit referred to by Mr. Minicus which was attached to Mr. Hackworth's letter, it was a memorandum of Mr. Hackworth to Mr. Parker, showed twelve wills withdrawn and I'd like to ask you if there isn't a decided difference between wills withdrawn and [fol. 1496] accounts closed?

A. Yes, because even though you have a will in your possession, you don't have any assurance that the maker of the will hadn't put a codicil on it naming someone else rather than you, so you are not particularly sure what you have when you just have the will.

Q. But wills withdrawn could indicate competitive activity, could it not?

A. A will is a potential piece of business and not an actual piece of business, but it is a very important part of a trust department.

Q. Mr. Fleming, yesterday we handed you an exhibit which was an organizational chart of the personnel of Nashville Bank and Trust Company as of January 1, 1964.

A. Yes.

Q. And we have revised that and removed the names of the individuals involved, and we now ask you if as a substitute for Defendant's Exhibit 44 you will look at this and tell us what it represents?

A. It represents the entire office complement of the Nashville Bank and Trust as of January the 1st, 1964, the age of each officer, the length of service with the Nashville Bank and Trust Company, the salary they were receiving as of January the 1st, 1964, including bonus, the salary they were receiving as of April 1, 1966, including bonus.

[fol. 1497] Q. Now from what source material was that——

A. Pardon me, bonus and contribution to pension plan.

Q. Yes, sir. Now from what source material was that prepared?

A. From the records of our bank.

Q. Under whose supervision?

A. Under my supervision.

Q. Do you accept full responsibility for it?

A. I do.

Mr. Farris: If the Court please, we now offer as a substitute, Defendant's Exhibit 44.

The Court: Let it be admitted.

(Defendant's Exhibit No. 44 was received into evidence.)

By Mr. Farris:

Q. Mr. Fleming, in response to one of Mr. Minicus' questions yesterday, you stated that the earnings of Nashville Bank and Trust Company which amounted to something over three hundred thousand dollars before taxes in 1963 could not stand up if certain expenses were met, and you offered to go into detail to illustrate that and I'll ask you now if you have the detailed information with respect to what you believe would have happened to their earnings [fol. 1498] if certain expenses were met.

Mr. Minicus: Objection, Your Honor. I don't believe the witness has been qualified to project an economic picture into the future with any degree of accuracy. He's telling us now what might happen a year, or two years from now. He's not qualified as an economic forecaster. I don't know what facts he could possibly have.

The Court: Well, of course he would have to say for himself what facts he had.

Mr. Minicus: But before he commences his testimony, is it understood that it must be based on factual material and not just conclusions drawn from his own thoughts on the matter? If he's going—they objected to our——

The Court: Any forecast of course would involve an element of just an opinion.

Mr. Minicus: They objected strenuously when we tried to project a chart of earnings for just four and a half months, and we had a economist to do it, and now they are asking the witness to project away into the future.

The Court: Of course I allowed this projection that you are talking about in evidence. I permitted it.

[fol. 1499] Mr. Minicus: Yes, sir.

The Court: Now this is a projection of earnings based on the assumption that the Nashville Bank and Trust Company should make certain expenditures to modernize the bank. Is that what you have in mind?

Mr. Farris: Yes, sir, it takes the year 1963 which is the last year for which a full year's operation is available, and it shows what the earnings for that year would have been if they had spent money for certain things which this witness can tell you why he selected those things, and the method of arriving at it.

The Court: This is on the assumption that the earnings continued at about the same rate?

Mr. Farris: No, sir. I'd like to just ask the witness if he had studied their earnings picture.

The Court: Ask him some preliminary questions and let me see.

Mr. Farris: Yes, sir.

Mr. Minicus: I would like to add before this commences, there's been no foundation for the fact that any of these things were necessary. It may have been that the acquiring bank preferred the chrome and the wall paneling and so on, but we have no complaints from the customers of Nashville Bank and Trust Company that they didn't like [fol. 1500] the appearance of the premises.

The Court: Well, we don't have any direct evidence of that nature, that's correct, but go ahead and let me see what you propose to do along this line.

By Mr. Farris:

Q. Now, Mr. Fleming, I believe you indicated yesterday that you had many years experience as a bank executive?

A. That's right.

Q. And you have studied bank operations and bank expenses during a good long period of time?

A. That's part of the responsibility of my job.

Q. Now in your opinion, as an experienced banker, if you take the earnings of Nashville Bank and Trust Company for 1963, as shown on various exhibits now in evidence, and you stated yesterday that those earnings could not stand up, I'll ask you now to state in detail the reasons why you made that statement.

A. I was my opinion and still is, that if there had been charged against those earnings the expenditures which, in my judgment, were essential to the operation of a modern bank, that it would have been very greatly affected—it would have been adversely affected to a great extent.

[fol. 1501] Mr. Minicus: Objection, Your Honor.

The Court: He testified to that yesterday, that's already in the record.

Mr. Minicus: I move that it be stricken, Your Honor.

The Court: Overruled. I think that's competent.

Now, do you propose to go any further and show a projection into the future?

Mr. Farris: I don't propose that, no, Your Honor.

The Court: I thought that's what you had in mind when you started out.

Mr. Farris: No, sir.

The Court: Mr. Fleming said he made such a projection in detail, but it wasn't gone into yesterday.

Mr. Farris: I think Mr. Fleming has a detailed analysis in support of his opinion, and I was— since counsel asked him about that on cross examination, I think it is permissible now on redirect to ask him what that detailed analysis is with respect to the year 1963. It is not a projection.

The Court: Not a projection?

Mr. Farris: No, sir.

[fol. 1502] The Court: You mean on the assumption that these expenditures had been made in 1963?

Mr. Farris: Yes, sir, what the profit would have been in that year if certain expenditures had been made, which this witness in his opinion thinks were necessary.

The Court: All right, go ahead.

The Witness: I will confine my answer not to any projection of what might have happened, but what we have actually spent.

The 1963 net income before federal income tax of the Nashville Bank and Trust was $566,000. We increased salaries 17.3 per cent, which is an amount of $90,548, which in my judgment, those salaries should have been increased in '63.

We increased fringe benefits by $89,789. It is my judgment that the employees should have had a larger group life insurance and many other of the fringe benefits which we have made available to them.

We started a past service pension plan at the cost of $452,930. We are amortizing that over a ten-year period, which I am sure would have been the same period the Nashville Bank and Trust would have amortized it over, if they had made available to their employees a funded pension plan of $45,293 a year.

[fol. 1503] We remodeled the banking house on Union

Street at a cost of $87,177. We are amortizing that at the rate of $13,734.00.

The amount that we have actually spent therefore to do what we—which I feel was absolutely essential for the Nashville Bank and Trust and should have been done in 1963 totals $239,000.

Now if that amount was deducted from the $566,000, you would have left $327,000.

Now we felt that an audit department was necessary for a bank of this size. Without an audit department, I don't see how any bank can guard against defalcations, inefficiencies and many other things that are the plague of the banking business.

The very minimus audit department would have been four people at $275.00 a month or $17,820. We have installed such a department for the Nashville Bank and Trust.

They would have had to have had some additional business development department. It's been testified I believe that it was a very skeleton group, but to even keep their own customers, you today have to have people go call on them.

Well, just one man at ten thousand dollars and two clerks at three hundred dollars a month would be $23,220.-00.

[fol. 1504] It's been testified that they had no credit department. How you can lend money without taking an undue risk without a credit department, I don't know. The very minimum credit department would be four people, one at ten thousand to head the department, one senior clerk at $450.00 and two at $275.00 a month. The total of that would be $25,000.00.

[fol. 1505] Now, if automation—and I am not speaking merely of a computer—but if they had brought in automation, and I think that most anyone knowledgeable in the banking field today would say that automation is almost essential to handle the mounting paper work that is going to confront us—I testified yesterday that it would cost over $10,000 a month, specifically, $10,375; and I have it all itemized here.

Mr. Gray, our operations man, is coming to testify later,

and he can go into detail if you want him to. But that would be $124,500 a year.

Now, if this bank was to continue with only on branch, Mr. Hackworth very forcefully pointed out, I think, in his affidavit that this is a great handicap—the traffic and the convenience of the public, and it is becoming more and more difficult to attract business without a branching system.

After Mr. Weaver agreed to purchase this stock from the Hill Company, he had a survey made out at Green Hills as to what it would cost to establish one branch. The rent there would have been $412,000; improvements, $80,000, or, amortized over twenty years, $4,000 a year. The minimum salaries to operate the smallest type branch would be $39,000 a year. Other expenses of all types, $30,000.

I beg your pardon; the salaries would have been $19,000. And operating expense, $15,000, which is based on [fol. 1506] the operating expense of the Murfreesboro Road branch which was operated by the Nashville Bank and Trust.

In other words, it would cost in our opinion $51,000 as a minimum to just establish one more bank, one more branch.

Now, if you had added those four expenditures into the $239,000 that has actually been spent, you would have a total of about $360,000 outside of the automation and computer. You put the automation and the computer in there, and you would have around $480,000.

It doesn't take any mathematician to take earnings of $566,000 and charge against them what I consider to be essential to have operated this bank on an efficient basis. You deduct your $480,000, and instead of having $566,000, you have got left about $85,000.

$85,000 wasn't sufficient to take care of the amount that they had been transferring every year to bad debt reserve. So, Mr. Farris, I say very sincerely that I do not feel that the earnings shown in '63 were realistic because there had not been charged against those earnings the things that were necessary in my opinion to have this bank operated efficiently.

Mr. Minicus: I move that the answer be stricken; that there is no foundation for the testimony given; that the witness has spoken about increased costs of their pension [fol. 1507] fund in complete disregard of the fact that there were pensions available to the employees of the Nashville Bank and Trust Company.

He has talked about very expensive remodeling without showing the absolute necessity of that remodeling. There has been no condemnation, no action by public authority, against the condition of the premises.

In fact, they have always looked pretty good to me. That's only my opinion.

He has mentioned the credit department. Several witnesses have testified to this Court that the bank for its size had adequate and ample credit facilities available. In fact, if they wanted to use them, they could have used the larger credit department of the First American National Bank.

He has mentioned the auditing department. There has been no showing in this case that the auditing procedures of the Nashville Bank and Trust Company were inadequate or were ever wrong. They seemed to add up their figures and come out with the right answer.

He has mentioned automation, without at the same time denying knowledge of whether a bank of $50 million should have automation. He has mentioned branches. [fol. 1508] This is one of the greatest controversies in banking in America today—whether it is better to run unit branches or have branch banks. The witness prefers branch banks, but there are a great many people who do not agree with him on that.

But then, on top of all of these fantastic figures he has produced here, he insists it all should be done in one year by a $50 million bank. That is not even good bank figuring. No bank would undertake that, Your Honor.

Therefore, I move that the answer be stricken.

The Court: I think your objections go to the weight to be given this testimony. I will admit it and weigh it along with all the other evidence.

Mr. Minicus: Thank you, Your Honor.

The Court: Is there anything further now?

Mr. Farris: There is one other thing I think we ought to clear up, if the Court please.

By Mr. Farris:

Q. Mr. Fleming, on yesterday Mr. Minicus strongly inferred while questioning you that the Third Small Business Investment Company, by preferring to make loans to Third's own customers, and at the same time while borrowing funds from the government, was doing something improper.

Will you comment on that, please?

[fol. 1509] Mr. Minicus: Objection; I made no such inference. I did nothing but ask the witness questions, Your Honor. I ask that that part of the question that attributes any inferences to me be stricken.

I inferred nothing from it.

Mr. Farris: I will reword the question, then. I interpreted it to mean that. It had a strong inference.

Mr. Minicus: I don't want the record to show your interpretation, sir.

The Court: Proceed. Rephrase your question.

By Mr. Farris:

Q. Mr. Fleming, I would like to ask you this about the Third Small Business Investment Company. What is the total capital of the company, and who owns the capital?

A. A capital of $400,000; all of it is owned by the Third National Bank.

Q. How much is borrowed from the federal government?

A. $143,000 at the present time is borrowed from the Small Business Administration.

Q. Is interest paid to the government on that sum?

A. Yes, the regular interest as prescribed by Congress.

[fol. 1510] Q. Because of borrowing from the government under the circumstances you have described, do you believe there is anything improper about giving first preference to the customers of Third National Bank in your lending policies?

Mr. Minicus: Objection, Your Honor. I think there might even be an interpretation of the regulations of the Small Business Administration.

The Court: Is there anything improper? I don't think that is the point here, is it? There is no insinuation that

anything that is done along that line is improper. If you think I have some idea that something sinister is going on in the operation of this company, I don't have that impression. So you can leave that.

Mr. Farris: I will ask this question, then, Your Honor.

By Mr. Farris:

Q. Mr. Fleming, do you think the Third Small Business Investment Company has an obligation, in view of its structure and capital paid in and borrowings from the government, to make loans to persons other than customers of the Third National Bank unless the funds are readily available?

A. I think that our small loan company is a private enterprise concern, owned in its entirety by our bank. I think under the rules and regulations as to the type loans that [fol. 1511] such a federally chartered company can make, that we have the right to lend money to any small businesses that we want to.

I do not think that the government under any circumstances would have the right to tell us who we could lend money to and who we couldn't.

Mr. Minicus: I move that the last sentence be stricken. Nobody has inferred that the government was imposing any obligation on him to lend money to particular persons. We are only going on his testimony that they gave priority to their own customers.

The Court: Yes. I think I will let it stand. I don't see that it is particularly material.

Mr. Farris: All right, sir. I will move on to something else.

By Mr. Farris:

Q. Yesterday, Mr. Fleming, you were asked whether or not the merger had anything to do with the new office building that is now under construction, and you indicated that you believed it did not. Do you care to explain further that answer?

A. Yes. I have considered the question that Mr. Minicus asked me yesterday. I would like to reconsider my answer for this reason.

We had the intention of moving the Third National [fol. 1512] Bank's trust department down to the location of the Nashville Bank and Trust. We had architectural designs and estimates made, and it was determined quite conclusively that the space there available was not large enough.

We then began to search around for some way where we could combine these two trust departments in the interest of greater efficiency. I had been looking out my window for a long time at a big hole in the ground right across the street.

In fact, the press pointed out that it was a blight on downtown Nashville. The though came to me that we were needing more space and maybe we should go ahead and try to make it possible for a new building to be put up.

First we thought about doing it ourselves. We thought about doing it in conjunction with the Life and Casualty Insurance Company. We owned the lot together, as a matter of fact—the Life and Casualty and ourselves.

But after due consideration it seemed best for us and for the Life and Casualty that they put a building up. But the Life and Casualty specified that they would not do that unless we would lend the building the prestige of our name, which of course would help them in renting office space; and also unless we would sign a long-time lease for large space in the building.

One of the reasons that we wanted to do this—there were [fol. 1513] several reasons—but one of the reasons was to find a place for the trust departments where they could both be together. The space in the Nashville Bank and Trust building was not large; the space in the Third National Bank was not. But we knew it would be a great advantage to have a new building over in that space to house the two trust departments.

I would say that one of the things that influenced us greatly is being willing to go ahead with this building was to find large enough space for these two trust departments.

I also feel that by reason of this new building going up in downtown Nashville that we are to a great extent carrying out the wishes expressed by administration after administration in Washington, to remove the blight from downtown, to try to invest money to rehabilitate the downtown business section.

So the merger really was instrumental in influencing us to participate in a new building, a new building which I contend is of the very greatest public interest; and I believe is going to be the beginning of a rehabilitation of our downtown section of Nashville.

Mr. Farris: If the Court please, just one more question. I am trying to finish quickly.

By Mr. Farris:

Q. Mr. Fleming, to a number of items you listed yester-[fol. 1514] day, you listed sixteen items of convenience and needs to the community. On cross-examination by Mr. Minicus you indicated that a number of those primarily benefited the customers of Nashville Bank and Trust Company.

I would like to ask you at this time to explain your answer with respect to benefits to the customers of Nashville Bank and Trust Company and how that benefits the community.

A. I believe it has been established that the customers and their families of the Nashville Bank and Trust constituted some forty thousand people living primarily in Davidson County. That's about ten percent of the population. I contend that whatever benefited those customers benefited the entire community.

To the same extent that Social Security checks or pension checks to those over sixty-five, they might pertain to only a small group of the community; but if those people didn't receive these Social Security checks or they didn't receive their pension checks, they wouldn't be able to own houses or to buy groceries or to be part of the community.

The public interest in my opinion is not an abstraction, but is an aggregate of many parts. Each part is a vital link in a chain. The forty thousand customers and their families of Nashville Bank and Trust were a vital link in the chain of this community. They were a vital part. And whatever [fol. 1515] affected them must have affected the whole community.

Mr. Farris: Thank you, sir.

Mr. Minicus: There was one point I would like to straighten out, Your Honor. I think its of very fundamental importance to this litigation.

Recross-examination.

By Mr. Minicus:

Q. You have just testified, Mr. Fleming, that the merger motivated your joint venture with Life and Casualty in building. I ask you: Are you aware that this merger is presently here in this Court subject to challenge, and it may eventuate that this amalgamation of the two institutions on which you claim your participation in this new building is based may some day be dissolved, and there won't be the single company to take care of that building?

A. I am thoroughly aware of that. But the merger, to the extent that it has gone forward, I say, was one of the factors that influenced us to combine with Life and Casualty to building this twenty-story building; and the twenty-story building, I say, can well be the catalytic agent which is going to cause a revamping of downtown Nashville, something that every administration that I know of for the [fol. 1516] last twenty years in Washington has encouraged.

Now, even if the merger is dissolved, the building would still be erected and the good to Nashville would still ensue.

Q. I just wanted to verify that you had that in contemplation.

A. Oh, yes.

Q. Then you also were talking about the employees of the Nashville Bank and Trust Company and of the forty thousand people dependent upon them. It is not your position, is it, sir, that those employees and their dependents would be cut off without income if the merger had not gone through?

Just answer me: Is that your position?

A. My position is that anything that benefited the forty thousand people or ten percent of Davidson County would also ensue to the benefit of all of the county.

Q. But the people themselves would not have been cut off without income if the merger had not taken place; is that correct?

A. I didn't have any such inference at all.

* * * * * * *

[fol. 1517] William C. Weaver, Jr., was called as a witness by and on behalf of the Defendant Banks, and, after having ben duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hunt:

Q. What is your vocation?

A. I am senior vice-president of finance for the National Life and Accident Insurance Company of Nashville, Tennessee.

[fol. 1518] Q. How long have you been connected with the National Life and Accident Insurance Company?

A. Since July, 1940.

Q. Are you the William Weaver who in early 1964 contracted to purchase the controlling stock interest in Nashville Bank and Trust Company?

A. Yes.

Q. Whose stock did you buy?

A. I bought the stock of the H. G. Hill Company, and Mr. W. S. Hackworth, part of his stock.

Q. Did you buy any stock owned individually by Mr. Hill or other members of his family?

A. No, I did not. They retained their personal holdings.

Q. So you and I understand that, if either of us refers to the Hill stock, we are talking about the stock of the H. G. Hill Company?

A. That's correct.

Q. Would you please tell the Court, with reasonable brevity, the sequence of events which led you to enter into a contract to purchase the bank stock and of your negotiations with respect to that contract?

A. Just briefly, back in the fall of 1963 my close friend, Mr. W. S. Hackworth, mentioned to me one day that the [fol. 1519] Hill family might be interested in selling the stock that they owned in the Nashville Bank and Trust Company, which was held by the H. G. Hill Company.

Q. Now I want to clear that. You mean the stock that they owned, the H. G. Hill Company, and they might be interested in selling the stock the H. G. Hill Company owned in Nashville Bank and Trust?

A. That's right. So we talked about it briefly, and sev-

eral weeks later, around the first part of November, I had lunch with Mr. Hackworth and we discussed the matter further.

I told him at that brief luncheon meeting that I would be very much interested in talking with Mr. Hill if he was really interested in talking to me.

As I recall it, I was leaving on a trip to Texas about that time, and we agreed that we would try to get together when I returned home.

I did return home about ten days later, and we had a meeting with Mr. Hill, Mr. Hackworth, and I, the latter part of November 1963. That meeting was held down in the directors' room of the Nashville Bank and Trust Company.

We had a rather lengthy discussion that afternoon. It must have lasted two or two and a half hours. Mr. Hill explained to me that he was giving some consideration to selling this stock.

[fol. 1520] As you know, he has a large grocery business and wanted to devote his full time to that business. He also wished to expand that grocery business and he could use the proceeds from this sale to do so. So I told him I was very much interested in considering the purchase of the Hill Company stock, which consisted of 9845 shares.

I requested certain information with reference to the Nashville Bank and Trust Company. I asked for operating statements, balance sheets. They furnished me with a complete list of their securities, a schedule of the borrowings and the mortgages. They gave me a complete list of the employees, their ages, the service that they had with the bank.

They also furnished me a report that was made up by the Bankers Trust Company of New York with reference to a funded pension plan. They furnished me fairly complete information about the Nashville Bank and Trust Company.

As a matter of fact, I was looking at my records just the other day, and I had a letter dated December 18 from Mr. Hackworth—it took them a little while to get this information and send it to me—but I had a letter dated December 18 in which he enclosed a lot of this information and he sent other things from time to time.

There were out-of-town trips, and we all got busy during the holidays and we were unable to get together until after

the first of the year. I remember seeing Mr. Hill at a New [fol. 1521] Year's Day party, and he said to me at that time that we ought to get together with Mr. Hackworth and have a little further discussion.

So I told him that we would do so just as soon as possible. I did get in touch with Mr. Hackworth within the next few days, and we set up a meeting for January 7 with Mr. Hill and Mr. Hackworth down at the Trust Company.

We had a rather lengthy discussion that afternoon. This is important: January 7 was the first date that I was convinced that Mr. Hill was interested in selling this stock owned by the H. G. Hill Company in the Nashville Bank and Trust Company.

Mr. Hackworth at that meeting also indicated to me that he might conceivably have an interest in selling me a little of his stock. We talked about his selling maybe a thousand shares.

He wasn't certain just what he wanted to do. He had 2510 shares at that time, and he did say that he was giving consideration to selling a thousand shares. I told him that I would be very happy to consider the purchase of his thousand shares, or he could hold it if he decided to do so.

We agreed that day that we would try to make a deal. We did not discuss price at this meeting, and agreed that we would all give consideration to the matter of the price [fol. 1522] that would be fair and equitable. You see, Mr. Hill was involved; Mr. Hackworth was involved, because he was also selling some stock; and of course I was involved as the purchaser representing my group.

We agreed to get together within the next few days, and we did that on January 10, which was just three days later. We had a rather lengthy meeting in the late afternoon down at the Trust Company again, with just Mr. Hill and Mr. Hackworth and me.

At that meeting we agreed that a price of $350 per share would be fair and equitable to all parties concerned. At that meeting I asked Mr. Hill if he would give me an option on this Hill Company stock for a period of sixty to ninety days, and he stated that he would prefer not to. He said, "You know me, and you know I will do what I say I will do." And of course I didn't question it because Mr. Hill and Mr.

Hackworth were men of the highest honor and integrity and I knew he would do what he said he would do.

I explained to him that I was leaving the following Tuesday, the 14th of January, for New York for the rest of that week; but that I would certainly give consideration to it and I would try to work out plans to buy his stock—that is, 9845 shares of stock owned by the Hill Company, and a thousand shares from Mr. Hackworth.

So that week end came on the I gave a lot of thought to [fol. 1523] it on Saturday. We left down there at the bank, I suppose, about six-thirty that Friday night. I gave a lot of thought to it on Saturday, and I decided that I had better go ahead and try to buy this stock while it was available.

So I called Mr. Hackworth and told him that I would like to go down to the bank to look over certain operating figures that I had not seen. So we arranged to go down there to the bank on Sunday afternoon, January 12.

I went down there with Mr. Hackworth and Mr. Young, who was vice-president and manager of the commercial banking department, and Mr. Walter M. Robinson, Jr., my brother-in-law and an attorney.

I wanted him to look over certain of the papers.

We spent, I would say, two or two and a half hours discussing it that Sunday afternoon. We looked over a good many operating figures. We looked over certain loans and so forth.

I made up my mind that afternoon that I was going forward with the purchase of the 9845 shares from the Hill Company and the thousand shares from Mr. Hackworth.

[fol. 1524] Mr. Robinson and I dropped Mr. Hackworth and Mr. Young by their respective homes, and then we later that evening went over to his house and drew up an agreement that I would sign agreeing to purchase this stock.

Q. Now when was the agreement to purchase entered into between you and the Messers. Hill and Hackworth?

A. The agreement was entered into on Monday afternoon, January the 13th.

Q. Mr. Weaver, I hand you Government Exhibit 3, a copy of it, my Xeroxed copy of it, and ask you if that is the letter agreement between you and Messrs. Hill and Hackworth?

A. Yes, this is the agreement Mr. Robinson and I drew up that Sunday night.

Q. Now is that agreement in the nature of an offer by you and an acceptance typed at the bottom of it by them?

A. Yes, that's right.

Q. What is the date of your letter?

A. The date of my letter was January the 11th, which was on Saturday, we dated it on Saturday.

The date of the acceptance at the bottom is January the 14th. It was——

Q. Now explain that.

A. It was actually signed on January the 13th, but I was [fol. 1525] a little superstitious about signing it on the 13th, so we dated it the 14th.

Q. Now will you turn to the agreement or just tell me this, without reading it, does that agreement obligate you, the agreement to purchase, obligate you to offer to purchase the stock from every stockholder except Messrs. Hill and Hackworth at the same price per share you agreed to pay them?

A. Yes, it did.

Q. Did you——

A. Mr. Hill——

Q. Did you comply with that obligation?

A. Mr. Hill insisted on that, and I thought it was fair and equitable too.

Q. Did you comply with that?

A. I complied with that.

Q. What was the result of your offer to the remaining stockholders?

A. We got out a letter to the minority stockholders. As I recall it that letter was dated January the 30th, over my signature, and we offered to purchase their stock at $350.00 per share, the same price we were paying the Hill Company and Mr. Hackworth for their shares.

Q. Mr. Weaver, now you have stated that you agreed to purchase this stock on January 13th. Did the fact become [fol. 1526] immediately known or was there a public announcement at that time of the matter?

A. No, there was no public announcement made at that time. The public announcement of this agreement was made on January the 23rd.

Q. You have just previously stated you left on the 14th for New York and were gone.——

A. That's right.

Q. —for some time.

A. That's right.

Q. So there was a public announcement of the purchase on January the 23rd?

A. That's correct...

Q. And how was that made?

A. Of course we had a meeting down at the Trust Company and told all of the officers and employees of the bank about it. Then a press conference was held in the director's room of the Nashville Bank and Trust Company, and all of the news media were advised of this contract.

Q. Did you have associates at the time you entered into that agreement to purchase?

A. I did.

Q. Now state whether or not you and your associates later signed a written agreement with respect to the matter.

[fol. 1527] A. We did, we entered into an agreement.

Q. And do you know that date or the approximate date of that agreement?

A. I don't remember the—I've got it here in my appointment book, I think.

Q. If I refresh you, it's a government-filed document, there's no question, it's January 31th.

A. Yes.

Q. You and your associates reduced to writing, reduced to writing your agreement between the associates?

A. That's correct.

Q. Now I hand you Government Exhibit 6 and ask you if that is a copy of the agreement between you and your associates.

A. Yes, this is the agreement that all of us executed.

Mr. Hunt: And these agreements, I should add, have already been filed in evidence. There's no need to tender them in evidence; they are in evidence.

By Mr. Hunt:

Q. State whether or not when you purchased this stock or agreed to purchase this stock you then intended to sell that stock?

A. I did not, absolutely.

Q. State whether or not at the time you entered into the [fol. 1528] agreement to purchase you intended to merge —you and your associates intended to merge with any other bank.

A. We certainly did not.

Q. State whether or not you and or your associates prior to January 13, had given any consideration whatsoever to a bank merger?

A. No, we had not.

Q. Now please refer there again to the agreement, Government Exhibit 3 which is the agreement between you and Messrs. Hill and Hackworth, and on page 3 read the sentence at the top of that page with respect to Mr. Hackworth.

A. It reads as follows:

> "In connection with this purchase, W. S. Hackworth agrees that:
>
> "1. He will retain the balance of the shares of stock of the bank owned by him following consummation of this purchase for at least as long as he is an officer of the bank;
>
> "2. He will continue after the closing date to use his best efforts to promote and secure the progess and success of the bank, and will also offer to continue as an executive officer of the bank for two years following said closing date."

Q. At whose request or insistence was that provision included into the written agreement?

[fol. 1529] A. I insisted upon these provisions in the agreement. I might mention the reason I insisted on it was because Mr. Hackworth was as invaluable to the Nashville Bank and Trust Company as any man could have possibly been.

Q. Do you know, as a fact, the date that Mr. Kirby Primm resigned as an officer of Nashville Bank and Trust Company?

A. Yes, I have that date in my appointment book here. It so happens that I was down there at the bank the afternoon that Mr. Primm notified Mr. Hackworth of his intentions to leave the Nashville Bank and Trust Company and go with the First American National Bank. That was on Friday, January the 31st.

Mr. Primm told Mr. Hackworth and me verbally; he later confirmed it by letter dated Friday, January the 31st, that he was resigning. He did agree to stay on until February the 15th, but his resignation was accepted by the Executive Committee of the Nashville Bank and Trust Company the following Monday, February the 3rd, and he left the bank and cleared his desk by noon that date.

Q. Did Mr. Primm leave of his own volition?

A. Yes, he did.

Q. And did he leave subsequent to the public announcement of the contract to purchase the stock?

A. He did.

[fol. 1530] Q. State whether or not you agreed to purchase this stock, you were aware of certain problems and responsibilities which would be yours after the purchase was consummated?

A. Yes, I was. Mr. Hill and Mr. Hackworth had discussed with me at some length the problems of the Nashville Bank and Trust Company, nothing was withheld by either one of these gentlemen.

Q. Will you please enumerate the more serious of those problems?

A. Well, there were many problems. I suppose the four major problems were, number one, management. Management was without question the biggest problem.

I suppose the second greatest problem was the lack of branch banks. Mr. Hackworth and Mr. Hill advised me that it would certainly be necessary to put in a group of small branch banks to compete.

The third major problem was the lack of a funded pension plan and security program for the officers and the employees of the bank, and the fourth major problem was the complete lack of automation and a computer.

Q. Before discussing these in some detail, I want to return to the agreement to purchase dated January 23 and ask you—I mean executed—I mean executed on January

13th and dated January 14th, and ask you now when was the purchase consummated by the transfer of the stock and [fol. 1531] the payment of the purchase price?

A. The purchase was consummated in the late afternoon of March the 11th.

Q. Is it or not a fact that under that written agreement, you were given the option of selecting the date of closing providing it was to be within—was it sixty or ninety days?

A. Ninety days, I was given until April 10th, 1964, to complete the purchase of the stock.

Q. And you elected to purchase on March 11th and of course that was agreeable with Messrs. Hill and Hackworth?

A. That's right.

Q. Now on what date did Mr. Hill resign as chairman of the board of Nashville Bank and Trust Company?

A. Mr. Hill resigned on March 11th, 1964, prior to the signing of this agreement. Not this agreement, but prior——

Q. To the effective——

A. To the sale of the stock.

Q. To the sale of the stock?

A. Right.

Q. Did Mr. Hill resign as chairman of that board at your suggestion or request?

A. No, he did not.

[fol. 1532] Q. What would have been your preference in the matter?

A. I would have much preferred for Mr. Hill to have remained on as chairman of the board and of course as a director.

Q. Had he ever represented to you that he would remain on?

A. No, he never had.

Q. Now you have enumerated what you consider the four most serious problems of the bank. Let's take up first the management problem.

What inquiries or inquiry did you make as to the possible solution of the management problem?

A. I suppose we gave more thought and consideration to the management problem than any other problem in the bank.

Mr. Weinbaum: Excuse me, Your Honor, could we pinpoint the time at which this consideration—was this prior to or after the purchase?

Mr. Hunt: Yes.

Mr. Weinbaum: By Mr. Weaver.

By Mr. Hunt:

Q. Was this consideration prior to or after January 13th, the date the agreement to purchase was made?

A. I had given a little thought to it, but frankly as I [fol. 1533] stated, I actually bought this bank in about a period of six days, from January the 7th to January the 13th. It wasn't much time to give consideration to it prior to that. I mentioned that I went to New York on Tuesday the 14th of January, and from that time forward, we gave a lot of thought and consideration to the problem of management.

Not only did I give thought to it, but my associates did, and we talked to a great many people in the banking and financial industry about the problem of management.

Q. Were most of your inquires with respect to that matter oral or in writing?

A. They were all oral with one exception. There was a letter that was—it's in my discovery deposition—a letter I wrote to Mr. Charles Buek, the president of the United States Trust Company. That was the only written communication that I know of.

Q. But you had, I believe you said, made numerous—you had made numerous contacts including numerous other bankers and bank-connected people?

A. Yes, I had, and my associates had made many inquiries.

Q. What conclusions or conclusion did you and your associates reach after making these inquiries?

A. We reached the conclusion that the management prob- [fol. 1534] blem was even greater than we had thought it would be. We found that it would be very difficult to bring in a man to replace Mr. Hackworth.

Q. And you knew, I believe, you knew Mr. Hackworth's age?

A. Mr. Hackworth was sixty-eight and he was going on sixty-nine and he wanted to retire and take it a little easier.

At my insistence, he had agreed to stay on for two more years, so the management problem, I thought, could be solved maybe during that two-year period.

But I found when I started talking to people about a man to come in and take that job that it would be very difficult to bring in a satisfactory replacement.

Q. When you investigated, you and your associates investigated the matter of building branch banks, what did you conclude?

A. Well, we found that in the first place that prime locations were very, very difficult to secure, and when you could find one, the price was very high. Locations for these branch banks have been selling for a hundred and a hundred and twenty-five thousand dollars. I know of several that have been sold in the last few years at that price.

By the time you built a building and equipped it and staffed it, the cost to operate that branch was very expensive, and we found that it would be several years before [fol. 1535] we could hope to break even in a new branch bank. That's the history of the industry.

Q. Would you comment briefly on the other two more serious problems that you mentioned?

A. Well, the third, I believe I said, was the lack of a funded pension plan.

The bank had considered a funded pension plan back in 1957, and Mr. Hackworth had furnished me with some correspondence with the Bankers Trust Company, I believe Mr. Fitzgerald Parker had been handling that matter. The Bankers Trust Company estimated that in 1957 that it would cost approximately $257,000 to fund a modest pension plan.

I checked those figures later, and I had an actuary check the figures. Incidentally there was an actuary in our group that purchased the controlling interest in Nashville Bank and Trust Company, and I got some tentative figures that the cost to fund that plan had gone up to approximately $378,000, and as Mr. Fleming testified, it actually cost $480,000 when this plan was finally funded.

So we found it would be very costly to fund a pension plan for the Nashville Bank and Trust Company officers and employees.

[fol. 1536] Q. Mr. Weaver, there has been testimony that there were some negotiations or discussions between you

and officers of the Commerce Union Bank regarding a possible merger.

A. That's correct.

Q. Who solicited whom with respect to that merger?

A. The Commerce Union Bank solicited us.

Q. Approximately when did you first talk merger with the officers of the Commerce Union at their solicitation?

A. It was over two weeks after I signed the agreement on January 13 to purchase this stock. As near as I can tell, it was after the first of February.

Q. More specifically, now, did you talk merger with anyone during the ten-day period that elapsed between the execution of the agreement to purchase and the public announcment of it?

A. I certainly did not.

Q. With whom at the Commerce Union Bank did you discuss a merger?

A. We were approached by the Commerce Union officials, and I had a meeting with Mr. William Earthman, the president; Mr. Louis Phillips, vice-chairman of the board; and Mr. David K. Wilson, who was a director of the bank and a large stockholder.

I think he now is the chairman of the trust committee. [fol. 1537] I don't believe he was serving in that capacity at that time.

Q. How long did these negotiations over the possible merger with Commerce Union continue?

A. Well, they didn't continue too long. They were very anxious to work out a merger plan with us. They offered me ten shares of Commerce Union for one share of Nashville Bank and Trust Company, which I wasn't remotely interested in; and the negotiations broke off in the next week or two.

I don't remember the exact date they broke off.

Q. Did you ever make them a counter-offer?

A. No, sir, I never made them a counter-offer of any kind. There was some discussion about twelve to one, but we actually were not interested particularly in working out a merger at that time. Of course I mentioned it to some of my associates, and a number of them weren't remotely interested in merger. We had bought the bank to operate,

and several of my associates wanted to go ahead with our original plans.

Q. What bank executives in Nashville other than those of Commerce Union approached you regarding the merger?

A. Mr. Sam Fleming of the Third National Bank.

Q. Again, I will ask you who solicited whom for the merger?

[fol. 1538] A. Well, as Mr. Fleming has testified, he solicited us.

Q. Were you in the courtroom yesterday when Mr. Fleming testified with respect to your and his discussions regarding possible merger?

A. I was.

Q. To avoid unnecessary repetition, I will ask you if you are willing to make your own his statements as to the chronology of events and what happened with respect to those negotiations?

A. I certainly will. Mr. Fleming made a very accurate statement as to those negotiations.

Q. If I should ask you the same questions one by one, your answers would be either identical or substantially the same as those of Mr. Fleming?

A. They would.

Q. So you make his testimony yours in that regard?

A. I do.

Q. State whether or not, in your discussions and negotiations with Mr. Fleming, he pointed out to you the gravity of the problems and responsibilities which confronted you and Nashville Bank and Trust Company?

A. He certainly did. He pointed out these problems very forcefully, I might say.

Q. Was there a letter agreement with Mr. Fleming re-[fol. 1539] garding the proposed merger?

A. Yes, there was.

Q. And that letter was signed by you and by Mr. Fleming. That was in the form of a letter from Mr. Fleming to you, accepted by you?

A. Accepted by me, subject to the approval of my associates and to the approval of the Nashville Bank and Trust Company stockholders and directors, of course.

Q. Now I hand you Government Exhibit 79 and ask you

if that is a copy of the agreement between you and Mr. Fleming? You both have signed that agreement?

A. No, this letter you handed me here is a letter written to Mr. Fleming, to be sent to the Comptroller of the Currency.

Q. I am going to stop here and start looking that up at this time. It has been filed.

There was a letter agreement between you on behalf of you and your associates and Mr. Fleming for the merger conditioned upon the approval of the boards of directors of both banks?

A. That's right. I signed that on——

Q. Did you discuss that matter with any person other than your associates or the officers and directors of the Nashville Bank and Trust Company prior to the merger? More specifically, did you talk with Mr. Hill about the matter?

[fol. 1540] A. Yes, I did. I told Mr. Fleming that Mr. Craig was in full agreement, as were our other associates; that he didn't want to make any deal until we had a meeting with Mr. Hill and had explained to him what we had decided to do.

We held such a meeting with Mr. Hill prior to agreeing to Mr. Fleming's proposal.

Q. What did Mr. Hill say, in substance?

A. In substance he was very appreciative of our calling him in for a meeting, which was held out at my house with Mr. Hackworth and Mr. Edwin W. Craig. Mr. Craig was chairman of the board of National Life, and my father-in-law and one of the associates in the deal.

He was very deeply appreciative of the courtesy which we showed him in calling him in to discuss this matter before we made a final decision.

Q. I believe I have that letter agreement, which is not very important, but I will let you identify Government Exhibit 478 as the letter agreement between you and Mr. Fleming.

A. That's the agreement.

Q. It is an agreement in the form of a letter written by Mr. Fleming to you and with your written approval at the bottom, subject to approval by your associates and by

the directors and stockholders of Nashville Bank and Trust Company?

[fol. 1541] A. That's right.

Q. And Mr. Fleming in his letter had conditioned his offer upon acceptance by the board of directors and stockholders of the Third National Bank?

A. Of his bank.

Mr. Hunt: That also is in evidence, Your Honor.

By Mr. Hunt:

Q. Did you in June 1964 write a letter to Mr. Fleming giving the background and intention of you and your associates with respect to this matter?

A. I did.

Q. Now I hand you Government Exhibit 79 and ask you if that is a copy of the letter which you wrote to Mr. Fleming regarding this matter.

A. That's right.

Q. When you wrote this letter to Mr. Fleming, what use did you understand he intended to make of the letter?

A. I understood that the letter would be submitted to the Comptroller of the Currency to go in the file with reference to the merger application.

Q. You earlier made the statement that at your request or insistence there was included the provision that Mr. Hackworth would remain as an officer there two years.

A. That's right.

Q. And that you did that because he was invaluable. [fol. 1542] Will you elaborate or explain that a little more, about his value to Nashville Bank and Trust Company?

A. Well, of course Mr. Hackworth was a man who had a wonderful standing in this community. He had been president of the Nashville, Chattanooga, and St. Louis Railroad for many years; had done a marvelous job with that railroad. He had also been very active in the civic, religious, and educational life of this community.

He had served as president of the Nashville Chamber of Commerce. He was active on the Peabody board. He was on many boards all over the community, and he was a man that had a tremendous personal following. He had as many friends as any man that I have ever known in his community.

He was a great asset to the bank.

Q. Was Mr. Hackworth or his early replacement, because of age: Did you regard that as your only management problem?

A. No, I did not. That was just one of many management problems.

Q. Why?

A. Because the bank had not had a program of recruiting young college graduates and bringing them into the bank like the other major banks in Nashville; and they had very few bright young men that were in that category. The bank was also fairly weak in the middle management group, and the older men in the bank, many of whom headed up departments, were very old. As a matter of fact, some of them should have been retired at that time.

[fol. 1543]

Cross-examination.

By Mr. Weinbaum:

Q. Mr. Weaver, you have testified that you were generally aware of certain problems at the Trust Company before you purchased the controlling interest. Is that correct?

A. That's correct.

Q. And knowing of the existence of these various problems, you went forward and made your investment nonetheless?

A. That's correct.

Q. Were you still convinced at that time that you were making a sound investment?

A. I certainly hoped that I was, Mr. Weinbaum. I invested $1,400,000; and you don't do that unless you think you are making a reasonably good investment.

Q. And the entire investment of you and your associates was approximately $3.8 million. Is that correct?

A. A little less than that. I think it was $3,780,000.

[fol. 1544] Q. You had no reason to believe that you were not making a good and sound investment?

A. Well, I had reason to question whether or not I had made as good a deal as I thought at the time I signed the contract with Mr. Hill and with Mr. Hackworth, after I got into the management problems and the other problems I have related here today in some depth.

Q. As we understand it, then, subsequent to the signing of the agreement on January 14, you got into each of these enumerated problems in more depth?

A. That's right. There wasn't time to get into these problems actually in depth before I signed the agreement because, as I explained, I bought the Trust Company in about a six-day period.

Q. Prior to your purchase of control of the Trust Company, Mr. Weaver, did you discuss with any of your associates or with others in the community or with people elsewhere in the country the feasibility of this purchase—that is, apart from your discussions with the principals involved?

A. As I recall it, I did not discuss the proposed purchase of the Nashville Bank and Trust Company with anyone other than my associates. Well, I might have discussed it with one or two people. But very few people did I discuss it with other than my associates prior to the purchase.

[fol. 1545] Q. Prior to your purchase, knowing what you knew at the time of the various problems you found to exist at the Trust Company, was it your belief that, based on this knowledge of the problems, you would be able to solve such problems?

A. I had hoped that I could, but I was probably a little overly optimistic.

Q. You went forward and purchased, however, believing that you were making a sound investment and that you could in all probability solve the problems that existed based on your knowledge at that time?

A. I had hopes that I could.

Q. You would not have undertaken such a large investment had you not believed this; is that correct?

A. Right.

Q. Mr. Weaver, can you explain in a little bit more detail how you arrived at the $350 purchase price which was considered to be a fair and equitable price?

A. Actually I think Mr. Hackworth and Mr. Hill had more to do in arriving at the $350 purchase price than I did.

Q. Did they propose this price to you?

A. Mr. Hackworth indicated to me that he thought such a price was fair and equitable to all parties concerned.

He was in the unique position of selling a thousand

[fol. 1546] shares, but he was retaining 1510 shares; and he thought it was a fair price. He was certainly interested in the deal being a fair deal because Mr. Hill was selling the H.G. Hill Company stock and our group was purchasing it.

Q. Did you have any basis of comparison, Mr. Weaver, by which you were able to judge the fairness of this $350 price per share?

A. Well, I made a few rough calculations on it. I felt that it was a reasonably fair price, predicated on the operating ratios and so forth. Of course, you must remember that there were a lot of intangibles that I didn't know about at the time.

Q. Did you have occasion to be aware of the prices at which other bank stocks in the Southeast region were selling for at about that time?

A. Yes, I had figures on that.

Q. I would like to call your attention, Mr. Weaver, if I might, to Government Exhibit 505. It is a letter dated February 10, 1964, addressed to Mr. R. H. Jordan of Mid-South Securities Company. It is signed by the president, and there is a notation, "blind carbon copy to Mr. William C. Weaver, Jr."

Mr. Weaver, was this letter written by Mr. Hackworth to your knowledge, the top letter, sir?

A. Yes, I think it was.

[fol. 1547] Mr. Weinbaum: I would like to read, if I might, a pertinent and short part of this letter, Your Honor. The last five lines in the second paragraph:

> "I wish to advise you as a stockholder"—this is writing to Mr. Jordan—"that for the year ended December 31, 1963, the bank had a net earnings after federal income tax of $22.51 per share. Since the purchase price is $350 per share, it represents a price ratio to earnings of 15.5. The average ratio of Southeastern banks as shown on Equitable Securities' latest report is approximately 18.5, which indicates the purchase price is in line."

By Mr. Weinbaum:

Q. Mr. Weaver, if the market value of the Nashville Bank and Trust Company stock had been computed on the basis of the price-earnings ratio for Southeastern banks as shown in the Equitable Securities' report, would not the market value of such stock have been higher?

A. Yes, it would have, Mr. Weinbaum. But there are a lot of differences in banks. You can't compare banks purely and simply on what the stock is selling for on a cost-earnings basis or on a relationship to book value. That doesn't mean anything.

[fol. 1548] Q. Mr. Weaver, would you accept the figure of approximately $416 as being a market value of Nashville Bank stock at that time if the average price-earnings ratio of 18.5 were applied to the per share earnings?

A. I don't think that the 15.5 ratio is a fair ratio for the Trust Company.

Q. That was not the question, Mr. Weaver.

Mr. Weinbaum: Could you read that question back?

(Reporter read the last question.)

The Witness: You can't compare these banks on this ratio without looking into their operation, Mr. Weinbaum.

By Mr. Weinbaum:

Q. Mr. Weaver, would the multiplication work out to approximately $416 a share, just looking at the price-earnings?

A. Yes, if that is the only thing you take into consideration, Mr. Weinbaum. But there are other very important factors that you must take into consideration.

Q. I appreciate that, sir.

A. These banks that are being compared, Mr. Weinbaum, most of them are fully automated. They have funded pension plans. They have an adequate banking system. Their headquarters and their branches are modernized. You simply can't compare on this basis.

[fol. 1549] Mr. Weinbaum: Your Honor, we would like to request that the witness answer the questions asked and confine——

The Court: He said no, didn't he? Read that question back.

Mr. Weinbaum: I narrowed my inquiry, Your Honor, to the arithmetic computation.

Mr. Hunt: He answered yes, the arithmetic is correct.

The Court: Read that question.

Mr. Weinbaum: That's all I was asking.

The Witness: Mr. Weinbaum, the arithmetic was correct.

The Court: Fine.

The Witness: However——

The Court: That answers it.

The Witness: Okay.

By Mr. Weinbaum:

Q. I would like to proceed to the third paragraph of this letter which indicates and I quote:

> "Another basis often used in determining the sale price is that of book value. This average for the same southeastern banks mentioned above is 1.5. The price of $350.00 based on the book value of $280.00 is 1.25. On this basis, it seems to be a good purchase."

[fol. 1550] Mr. Weaver, if we were to apply only arithmetic in connection with the value of Nashville Bank stock, market value, based on the book value, times the ratio for southeastern banks, would not the market value, using that standard solely, be about $420.00?

A. Purely and simply on the basis of the arithmetic?

Q. Yes, sir.

A. That would be correct.

Q. Yes, sir. You believed, did you not, Mr. Weaver, that you were purchasing this bank at a fair and equitable price?

A. I hoped that I was.

Q. I would like to call your attention, Mr. Weaver, to the contract of purchase which you entered into with Messrs. Hill and Hackworth, and you have stated that the agreement was not an option, it was a binding obligation to purchase personally, on your part, 10,845 shares of stock.

A. That's correct.

Q. And what was the reason for the insertion of an April 10, 1964, consummation date for the transaction?

A. Well, that was to give me and my associates sufficient time to close out the deal.

Q. And under this contract, Mr. Weaver, you would not [fol. 1551] have been permitted to walk away from this obligation without legal consequences, is that correct?

A. I considered it a binding agreement.

Q. Yes, sir. Calling your attention to page 2 of the agreement, Mr. Weaver—excuse me.

Mr. Weinbaum: Is there a copy that—

The Witness: May I have a copy?

Mr. Hunt: What agreement is it?

Mr. Weinbaum: Government Exhibit 3, Mr. Hunt. Or we can use the Court's copy.

The Court: Let the witness have a copy.

Mr. Weinbaum: Mr. Cooper, we have one, thank you.

By Mr. Weinbaum:

Q. On page 2, Mr. Weaver, the contract reads:

"In connection with this purchase, I agree that:"

And this is your—these are your obligations, and reference was made to your agreement to buy stock of the other stockholders, or offer to purchase stock at the same price at which you purchased from Mr. Hill and Mr. Hackworth, and I believe you testified that your solicitation of these other outstanding shares among minority stockholders was not successful.

Were you able to pick up any shares at all?

[fol. 1552] A. We—our group didn't buy any shares as a result of this offer that was made to the minority stockholders.

Q. And generally what was the nature of the—or response you did get when you sent your letter to the minority stockholders?

A. Well, most of them indicated that they didn't wish to sell their stock.

Q. Did any give particular reasons for not wishing to sell their stock?

A. I have forgotten. Of course a lot of people that owned the stock had a sentimental interest in it. They had owned it for many years. Their families before them had owned

it, and I've forgotten now the details of those letters. I did receive a number of letters in answer to my letter.

Q. Would the fact that you were becoming part of the bank along with many of your associates who were influential people in the community have had any restraining effect on the willingness to sell this stock in your opinion?

A. I don't think I'm in any position to answer that question, Mr. Weinbaum. I would hope that that would have had some bearing on their decisions.

Q. Yes, sir. Moving on, Mr. Weaver, to certain of the other provisions which you understood to assume in this contract with Messrs. Hill and Hackworth, you speak of [fol. 1553] setting up a funded pension plan, and under 2(a), you indicate certain liberalizations including providing early retirement benefits at age fifty-five for the actuarial benefits at age sixty-five, and in parenthesis:

(This is the same basic provision in the present plan at the National Life.)

Could you please explain what is meant by this provision?

A. Well, this type of provision is prevalent in all modern pension plans, and this was simply an effort to streamline the pension plan of the Nashville Bank and Trust Company and bring it up to date.

Mr. Hunt: Speak up a little bit, Mr. Weaver.
The Witness: What's that?
Mr. Hunt: Speak up just a little bit.
The Witness: All right.

By Mr. Weinbaum:

Q. Mr. Weaver, what does the providing of early retirement benefits at age sixty-five mean in operation of the pension plan?

A. Well, it simply means if a man retires at age fifty-five, that he takes a considerably smaller pension than at age sixty-five.

Q. It does, however, enable——

A. There's a very severe penalty for early retirement.

[fol. 1554] Q. It does provide retirement at age fifty-five with some retirement benefits?

A. With greatly reduced benefits.

Q. Yes, sir. And do you know whether or not the prior Nashville Bank and Trust Company pension plan had a similar provision granting pension benefits at age fifty-five?

A. No, they had a pension plan, Mr. Hill and Mr. Hackworth furnished me with a copy of it, it was a very brief pension plan; as I recall it, it provided for retirement at age sixty-five, and it wasn't funded, and the funds were paid out of earnings.

Q. Yes, sir. And would this alteration in minimum age at which you could receive pension benefits have been instituted at your request?

A. I don't remember at whose request it was. Practically, from a practical standpoint, it didn't particularly matter, because I don't know of any employee down there that could have afforded to have retired at age fifty-five on the basis of the reduced benefits with the salary scale that was in existence at that time.

Q. Would it not have been easier for an employee at Nashville Bank and Trust Company to retire at fifty-five under this pension plan than it would have been to retire at fifty-five under the old Nashville Bank and Trust pension plan.

[fol. 1555] A. Well, they couldn't have retired from a practical standpoint at fifty-five under either plan; there simply wouldn't have been enough money for them to live on.

Q. As a practical matter, they would not have received anything under the Nashville Bank and Trust Company pension plan.

A. Well, they didn't have a retirement plan at fifty-five.

Q. Yes, sir.

A. This was just an effort to streamline the plan and bring it up to date, make it modern.

Q. Yes, sir. Turning to provision (b) under (2), Mr. Weaver, you provided for an elimination of the restriction against employment by a competitor of the bank after retirement. Did this mean that an employee could retire at age fifty-five if he chose, and go to work for another commercial banking institution and still receive pension benefits?

A. That's correct.

Q. In your judgment, Mr. Weaver, would these changes in the retirement or pension benefits from those at the Trust

Company prior to the time that you assumed control have made it any easier for you to make replacements among the existing employees at the Trust Company?

[fol. 1556] A. I don't think it made any particular difference, Mr. Weinbaum, from a practical point of view. I think it was all academic.

Q. Yes, sir.

A. And from a practical point of view, the way I analyzed it, it really didn't matter.

Q. Moving on, Mr. Weaver, in connection with this purchase, H. G. Hill, Jr., agrees that:

> "(2) he will retain, and will advise each other member of his family to retain, all shares of stock of the Bank owned by him following consummation of this purchase.".

Was this a provision you insisted on?

A. Yes, I of course was very much interested in having Mr. Hill and all of the members of the Hill family, all of their connections, retain their personal stock in the Nashville Bank and Trust Company.

Q. What was your——

A. I thought that would be very important.

Q. And in what respect, Mr. Weaver?

A. Well, the Hill family are very prominent people, highly regarded as everybody in the community knows, and we wanted Mr. Hill and members of his family to be associated with us in the ownership of the Nashville Bank and Trust Company.

[fol. 1557] Q. Did you deem this provision of the contract to be of utmost importance?

A. Well, I though it was important, and Mr. Hill was delighted to go along. He didn't have any desire and he of course couldn't control what the members of his family did, this wasn't any binding agreement on Mr. Hill. This agreement here could not have precluded the sale of some stock by a member of his family.

Q. It did preclude sale of Mr. Hill's personal stock?

A. Well, he had a moral obligation to retain his holdings.

Q. Mr. Weaver——

A. That's the only contract I wanted with Mr. Hill was just a moral contract. That's all I needed.

Q. It is a legal contract as well, is it not, with regard to his personal stock?

A. I'm not a lawyer, Mr. Weinbaum; I can't answer that question.

Q. The contract reads that he will retain and will advise each other member of his family to retain.

A. I assume that it would be binding on him legally, but I can't answer that question; I'm not a lawyer.

Q. Can you approximate the number of shares owned by Mr. Hill at that time?

[fol. 1558] A. I don't remember how many shares he owned, Mr. Weinbaum, at that time, personally.

Q. Would you have any idea of what the total number of shares of the family was?

A. No, I don't recall the total number of shares.

Q. Did you hope, Mr. Weaver, by retaining this family ownership in the Trust Company to retain the Hill association and Hill influence in your bank?

A. That's right.

Q. Moving on to item (3), Mr. Hill agrees that:

> "He will continue after the closing date to use his best efforts to cause H. G. Hill Company and members of his family to continue to do business with the Bank."

Why was this important, Mr. Weaver, if it was important?

A. Well, the same fundamental principals are prevalent here that applied in paragraph 2 above.

Q. Moving on to page 3:

> "In connection with this purchase, W. S. Hackworth agrees that:
>
> "(1) He will retain the balance of the shares of stock of the Bank owned by him following consummation of this purchase for at least as long as he is an officer of the bank."

[fol. 1559] And what was your purpose in—well, what was the purpose of including this provision?

A. Well, I stated previously, when Mr. Hunt was examin-

ing me, that I considered it of the utmost importance to the bank for Mr. Hackworth to remain on for a period of at least two years, he was so invaluable to the bank.

Q. Did you insist on this particular provision?

A. I did, Mr. Hackworth was agreeable.

Q. Paragraph (2) indicates that Mr. Hackworth:

> "Will continue after the closing date to use his best efforts to promote and secure the progress and success of the bank and will also offer to continue as an executive officer of the Bank for two years following said closing date."

I assume, Mr. Weaver, that this again was part of your desire to retain the Hackworth influence?

A. That's correct.

Q. At the bank.

A. Yes, sir!

Q. This, however, was not a binding obligation on your part to retain Mr. Hackworth's services, was it?

A. Well, I considered it a gentleman's agreement that he could stay on. Of course he could have stayed on as long as he wanted.

Q. You did not insist that he agree to continue as execu- [fol. 1560] tive officer of the bank for two years following the closing date, did you?

A. Well, Mr. Hackworth's health wasn't too good at that point, Mr. Weinbaum, and that may have something to do with the wording of that paragraph (2).

Q. I see. Another aspect of this purchase, Mr. Weaver, which we would like to discuss concerns the Board of Directors of the Nashville Bank and Trust Company, and during the course of Mr. Fleming's testimony, it was brought out that there were many, many aging directors on the Board of your bank, and I would like to ask you, Mr. Weaver, whether or not it isn't quite common when a new owner, with a controlling interest in a corporation elects some of its own folks to the Board of Directors?

A. Well, that's done in a lot of cases, of course.

Q. Would you express any opinion as to whether you intended to elect your own people to the Board of Directors?

A. We had no plans at that time to change the Board of Directors, and none of the members of my group had

any plans at that time to go on the Board of Directors of the Nashville Bank and Trust Company.

Q. How much stock did your people control in this bank, Mr. Weaver, approximately, percentage-wise?

A. Well, there, let's see, there were about 16,333 shares, and we bought 10,845 shares, so that is approximately two-[fol. 1561] thirds, approximately. I don't have the exact figure.

Q. Would you generally invest a sizable sum of money to control a corporation, Mr. Weaver, and have no intention at all of electing some of your own people to the Board of Directors?

A. Well, we had complete confidence in Mr. Hackworth and he agreed to stay on for a period of two years, Mr. Weinbaum, and we really hadn't given too much consideration to the Board of Directors at that point.

Q. There was a policy, as I understand it, Mr. Weaver, which prohibited either expressly or an informal policy at National Life and Accident, prohibited any of its officers from serving on the boards of banks, is that correct?

A. There was at that particular time; at the time of the signing of the agreement.

[fol. 1562] Mr. Hunt: May it please the Court, I believe we are going beyond the scope of direct. He has answered that question, but I just want to say with respect to that line of questioning——

The Court: He is going into a lot of detail.

Mr. Weinbaum: Your Honor, we think this detail is very important. We would like to develop this further. The defendants have said that the board of directors was a critical problem. We would like to explore this in some detail, if we might.

The Court: That would be competent to ask him about that, about their ages and their competency and so forth.

By Mr. Weinbaum:

Q. You are on the board of Third National Bank now; is that correct?

A. I am currently.

Q. The policy of the company has changed?

A. That's right. The executive committee gave me permission to serve on the Third National Bank board.

Q. As I undestand it, Mr. Weaver, you had no intention whatsoever of electing any of your people to the board of the Nashville Bank and Trust Company?

A. We hadn't made that decision actually, Mr. Weinbaum. What we would have done is speculation. Undoubtedly, with [fol. 1563] the board as old as it was, many replacements would have had to be made. I am sure we would have had something to say about who the replacements were.

Q. With sixty-six percent of the stock, you probably would have had a good deal to say, would you not?

A. Yes.

Q. Isn't control of a company, Mr. Weaver, usually consistent with ownership of a substantial number of shares?

A. I would say so, in most cases.

Q. Mr. Weaver, with regard to this agreement of January 14, 11th and 14th, the date which it was accepted by you, in this agreement it appears that you understook to make provision for certain things which you deemed essential to the success of the bank, did you not?

A. That's correct.

Q. Would it be fair to say you required certain terms in the agreement in an attempt to safeguard or preserve certain relationships for the Trust Company which you deemed very important to its success?

A. That's right.

Q. And by virtue of your assumption of control, Mr. Weaver, is it not also a fact that you did not intend in any way to be restrained or inhibited by certain of the relationships or practices of the Trust Company up to that time?

[fol. 1564] A. I don't understand your question.

Q. In buying the bank, Mr. Weaver, did you not hope to exercise a good amount of your own individual independent judgment and exert the influence of Mr. Weaver and his associates upon the institution?

A. Mr. Weinbaum, I wasn't in position, as I stated in some detail in the deposition I gave in October of 1964—I wasn't in position to devote much of my personal time to the affairs of the Nashville Bank and Trust Company.

It would have been necessary to bring in new people to head up the bank on Mr. Hackworth's retirement, and to

fill many of the other jobs of the older gentlemen who were heads of the various departments and so forth.

Of course, with the expectancy of the board such as it was, it would have been necessary to replace a good many of those men over the next several-year period. But we had no plans to ask for the resignation of any member of the board at that time. That would have been done over a period of time.

Q. Mr. Weaver, you indicated that when you bought the bank you had no intention whatsoever of taking any direct hand in the management. Is that correct?

A. That's correct.

Q. That your primary obligation was with your insurance company.

[fol. 1565] A. That's right.

Q. And in view of this fact, Mr. Weaver, would it not have been incumbent upon you at the time that you entered into the purchase to pay particular attention to the management problem?

A. Mr. Weinbaum, I felt rather confident when I signed this agreement with Mr. Hill and Mr. Hackworth that we could go out and bring in some good men to the bank and beef up the board of directors by bringing in some new members.

I hoped that I could do that.

Q. And you went into the deal with the full expectation that you would?

A. That's right.

Q. Prior to investing in the bank, however, the only information that you had with regard to management was what you saw on the surface. Is that not correct? That is, the ages of the officers, your general familiarity with their age situation?

A. That's right. I knew, of course, many of the officers of the bank. I had know them, some of them, all my life.

Q. Did your signing of the agreement, Mr. Weaver, on January 14 have the effect for all practical purposes of giving you the right to start thinking about bank policies and changes that you wished to institute?

[fol. 1566] A. Yes.

The Court: It certainly gave him the right. You are asking legal conclusions, it seems to me, in many instances in this line of inquiry.

Mr. Weinbaum: I am sorry, Your Honor.

The Court: If he owned a majority of the stock, he could completely control it. That is so basic and so fundamental, I don't see why we have to——

Mr. Weinbaum: Your Honor, the only point I was raising is that money had not changed hands. I was wondering whether on January——

The Court: There was a contract.

Mr. Weinbaum: That is correct.

The Court: It had been specifically performed, I suppose, if necessary.

By Mr. Weinbaum:

Q. Did you feel the company was your responsibility at that time?

A. Yes, I felt a great responsibility.

Q. With regard to shaping policies and making changes?

A. Of course I did. My statements in the deposition very clearly point that out. Mr. Hill, you will recall, stated that he felt that the bank would be in strong and safe hands with our group. I felt a great responsibility.

[fol. 1567] Q. You indicated that the public announcement, Mr. Weaver, of the merger came between January 14 and January 23.

A. It was made on January 23, Mr. Weinbaum. It wasn't between January 13 and January 23. It was actually made the afternoon of January 23.

Q. I am sorry, yes, sir. In your discussions, Mr. Weaver, with Commerce Union Bank, you indicated that the exchange rate which was discussed was approximately twelve shares for one.

A. No. Their offer was ten to one. There was some discussion. I never agreed to make a deal with the Commerce Union Bank, but there was some discussion of twelve to one. But of course anything that I agreed to would be subject to the approval of my associates; and I wouldn't have implied that I had the authority to make a deal on any basis without consulting with them.

This was purely an exploratory meeting that they had with me. They approached me about this proposed merger. I didn't initiate it in any way.

Q. What was the exchange rate that you proposed to them?

A. I didn't propose any definite deal. There was some discussion about twelve to one. You will recall that in my deposition I stated that they brought some figures where [fol. 1568] they had it worked out on the basis of ten to one and twelve to one, and on different bases. That's the reason we discussed the figures they brought along to the meeting.

Q. Was the price of thirteen to one ever discussed?

A. Well, I understand that one of the witnesses mentioned thirteen to one. It could have been. That's been over two years ago. It could have been that thirteen to one was mentioned. They might have mentioned fifteen to one. I don't know.

I don't remember over two years ago exactly what that was. There was no contract. There was nothing in writing other than the figures that they brought along at the meeting, which you have seen and have examined.

Q. At what point in time did you first seriously discuss the possibility of merger with Mr. Fleming?

A. At what time?

Q. Yes, sir.

A. Did I first discuss the possibility of a merger with Mr. Fleming?

Q. Yes, sir, on a serious basis.

A. Well, as Mr. Fleming testified, I think the first time he ever mentioned it to me was when he had heard the rumor that the Commerce Union Bank was negotiating for the merger. He mentioned it to me, as I recall it, on February 10 at a dinner that was given by Mr. Rufus Fort. He men- [fol. 1569] tioned it subsequently. We had a little discussion of it at a wedding at the Belle Meade Country Club on Saturday, the fifteenth of February, as he testified.

We just discussed it very briefly at that time. As I stated in the deposition, I was leaving on the overnight train for Chicago that night and I didn't get back until late that week.

We arranged after my return home to have breakfast at

my house on Saturday morning, the twenty-second of February. That was the first time we had seriously talked about a merger.

Q. Perhaps I can shorten this. You had a meeting of the minds on March 4; is that correct, with Mr. Fleming, on going forward with the merger?

A. Well, we had lunch at that time on March 4. But I don't recall whether or not we had a complete meeting of the minds. Of course it had to be approved by my associates. I had a good many associates in this deal. We had just about reached an agreement at that time, I would say.

Q. In your merger conversations with Commerce Union and then with Mr. Fleming prior to the March 4 date, why weren't you willing to explore seriously the prospect of merging?

A. Why what?

Q. Why weren't you interested in exploring the prospect [fol. 1570] of merger on a serious basis?

A. Prior to what date?

Q. Actually, prior to your February 22 meeting with Mr. Fleming.

A. Mr. Weinbaum, I had several associates in this deal that weren't interested in a merger of any kind. I had several associates that wanted us to operate the bank, which we had intended to do when we bought it. We had no idea whatsoever of either selling or merging this bank when we bought it. We planned to operate it.

We had some associates in the deal that felt that we should try to operate it and rebuild it. But when we got into these problems in depth, we found that they were far greater than we had anticipated. That's the reason we started serious discussions with Mr. Fleming.

Mr. Fleming is a great salesman, and he sold me on the idea, and my associates, that the problems, the great problems; of this bank could best be solved through a merger with the Third National Bank; and that the best interests of the stockholders, the employees, the officers, and the Nashville community would be best served through a merger.

We were convinced of that.

Q. Mr. Weaver, I would like to call your attention to Government Exhibit 79, which is the letter Mr. Hunt re-

ferred to, which you wrote to Mr. Sam Fleming on June 15, 1964. I would like to call your attention to the third page [fol. 1571] of this letter and read from the first full paragraph:

> "You can easily see from the above timetable that this deal was consummated very quickly. Time did not permit either me or my associates to make a thorough study of the future operating plans for the bank. When we completed a survey of the situation, we immediately realized that there were a good many weaknesses and shortcomings which would make the expansion and development of the bank most difficult."

I would like to examine each one of these glaring weaknesses in order to determine, Mr. Weaver, what it was which this complete survey revealed, which you didn't know about before you bought control of the bank.

The first item that I would like to turn to is the question of management. You cite as a factor being revealed after you completed a survey the situation that Mr. H. G. Hill, Jr., chairman of the board, wished to retire to devote his full time to the H. G. Hill Company.

Did you have any idea that this was going to happen before you bought the bank?

A. I wasn't sure that Mr. Hill would resign as chairman of the board. I had hoped very much that he would stay on as chairman of the board and as a director of the bank. [fol. 1572] But he decided that he should resign as chairman of the board.

Q. Did you have to complete——

A. We had hoped very much we could sell him on the idea of staying on.

Q. Did you have any reason to believe that he would stay on the board after he sold his substantial stock interest?

A. Well, he could have.

Q. Did you have any reason to believe that he would?

A. I really wasn't sure at that point whether he would or not. I had hopes that he would.

Q. The second point you state is that Mr. W. S. Hackworth, president, was 68 years old, and expressed a desire to retire within the next two years.

Did you have to complete a survey to immediately realize this?

A. Of course I didn't. What I was trying to get across about the survey was that we talked to many bankers throughout this country——

Q. We will get to that, Mr. Weaver, in a second. I would just at this time like to cover each of these points to determine whether or not these specific factors set out were known to you prior to the time that you bought the bank.
[fol. 1573] The third point: The average age of the other officers was high, and there were few capable young men coming along. The salaries of the officer group and of the employees were extremely low, so much so that capable young college graduates could not be attracted.
[fol. 1574] I'd like to ask you whether you knew before the merger about the salaries of the officer group?

A. Yes, of course I did, I had a list of the salaries.

Q. And you knew——

A. And the day after I signed the agreement to buy the Trust Company on the recommendation of Mr. Hill and Mr. Hackworth, we granted a five per cent across-the-board increase in salaries.

Q. You indicated also, Mr. Weaver, the salaries were so low that capable young college graduates could not be attracted. How many capable young college graduates did you try to attract?

A. Mr. Hackworth had explained to me that over the past several year period that they had brought in several young men and after they had learned a little something about the business, they would leave to accept a job somewhere else. They were unable to hold the people they did recruit because of the lack of funded pension plan, adequate salaries, and all of the fringe benefits that young men expect today.

Q. Mr. Weaver, would it be fair to say that as to the three items set out under your management point in this letter to Mr. Fleming, which you indicated was forwarded to the Comptroller of the Currency, that you knew about each one of these three items prior to the time that you bought control of the bank?
[fol. 1575] A. I didn't know about Mr. Hill definitely wishing to retire from the board. I had hoped that he would

stay on. I knew that he couldn't devote his time to the bank as he had previously, but I had hoped very much that he would remain as a member of the Board of Directors, and I had hoped that he would remain on as chairman.

Q. On the second point, Mr. Weaver, branch banks, you indicated that the Nashville Bank and Trust Company had only one small branch, and that on investigation, quote:

> "We found that locations were very difficult to obtain, and that the original cost plus the expense of maintaining the branch banks until they can become profitable was overwhelming, Also the personnel of the bank was totally inadequate to man a branch program."

As I understand it, Mr. Hackworth talked to you at length about the branching problem, is that not correct?

A. That's right, Mr. Hackworth felt that we needed a minimum of five to six branch banks strategically located throughout the community, in the growth areas of the community.

Q. Yes, sir, and you knew did you not that branch expansion was costly?

A. I didn't realize how costly it was until after I had [fol. 1576] signed this contract.

Q. Mr. Weaver——

A. And if you remember in my discovery deposition, I told you of the Green Hills location that we considered that we developed cost figures on. I told you that the rent was $1,000 a month. I explained to you that we would have had to spend, I think it was about eighty thousand dollars in leasehold improvements which had to be amortized, and by the time we manned that branch and operated it, paid the heat, lights, water, everything, that it would be a very expensive operation.

Q. Mr. Weaver, did you have any idea at all of what the cost of branch banking operations was prior to the time you bought this stock?

A. I didn't have concrete figures like I did after I had bought the stock.

Q. But you had a pretty good idea, did you not, Mr. Weaver?

A. I didn't have any concrete figures on it. I didn't have

time to develop concrete figures on it prior to the purchase, Mr. Weinbaum.

Q. You had no idea that a branch banking operation, a single branch might cost between seventy-five and a hundred thousand dollars?

A. Yes, I knew it would be expensive, but I had no ac-
[fol. 1577] curate figures on it.

Q. And is it not a fact, Mr. Weaver, that in connection with your work, you have had a good opportunity to be involved in construction costs for National Life and Accident Insurance Company?

A. Yes, but I never have built any branch banks. Banks are quite different from the type of little district office that we build. All the difference in the world between a little branch office that we build and a branch bank.

Q. Mr. Weaver, this branching consideration was quite important, wasn't it?

A. Very important.

Q. And you made a thorough study, you employed an architect who set up a proposed bid, is that not correct?

A. That's right, we got some estimated costs.

Q. Yes, sir. And is it not a fact that you received a final report from the architect on what it would cost to establish this branch on March 11, 1964?

A. I got it in writing. I had gotten some oral figures from him prior to that time.

Q. But the final proposal came in on March the 11th, 1964?

A. Well, that was the date when he finally got the letter in in writing, but I already had those figures prior to that.

[fol. 1578] Q. So you couldn't——

A. Mr. Hackworth had been out to Green Hills with a couple of the officers at the Nashville Bank and Trust Company, and they had been into this in some detail. That letter followed, and was sometime after we had gotten some estimated figures.

Q. The estimated figures were not too much different, were they, Mr. Weaver, from what you anticipated the cost of branch operations would be?

A. Well, after I got into it, Mr. Weinbaum, but let me make it clear to you that I had no accurate figures on the

cost of branch banking until I had signed this agreement with Mr. Hill and Mr. Hackworth.

Q. Mr. Hackworth, prior to the purchase by you of control, did not discuss at all the cost?

A. Oh, yes.

Q. Of setting up a branch?

A. He had discussed it, they had put in one little modest branch bank out on the Murfreesboro Road. They had bought another lot on 21st Avenue, just off of West End, and we also went into that deal and trid to figure how we could build a branch at that location, but I immediately found that the property was too small, and if we bought some adjoining land, the cost would have been prohibitive. Land out in that area is selling at around a thousand dollars a front foot.

[fol. 1579] Q. A definitive bid from an architect then was apparently not critical to your determination of the extent of a branching problem, was it?

A. I don't understand your question.

Q. The fact that you got a bid from an architect——

A. That is not a bid; that is an estimate, Mr. Weinbaum.

Q. An estimate?

A. That's not a bid.

Q. An estimate, excuse me. An estimate.

The fact that you got an estimate on March 11th on what it would cost——

A. I got the estimate prior to that date. I got it confirmed in writing on March the 11th.

Q. How much in advance did you get that estimate?

A. I've forgotten, but I'd say a week or ten days, maybe. We went out there and talked to Mr. Hackworth, and some of the officers at the Nashville Bank and Trust Company went out with the architects and they estimated the cost of it.

Q. And these informal conversations with the architect, these came after you had started serious conversations with Mr. Fleming?

A. That's right.

[fols. 1580-1587] Q. So that they were not relied on to determine the extent of your branching problem, and the cost of setting up a branch?

A. I don't get your question, exactly.

Mr. Weinbaum: Would you read the question, please?

(The last question was read by the reporter.)

The Witness: Yes, I think they were relied upon to determine the cost.

* * * * * * *

[fol. 1588] William C. Weaver, (Resumed)

* * * * * * *

Cross-examination. (Continued)

By Mr. Weinbaum:

Q. Mr. Weaver, when you bought the Trust Company, you anticipated, did you not, that you would have to add personnel and eventually replace some?

A. Yes, I did.

Q. And did you also not realize that it would be your duty as controlling owner to try and encourage those competent people that you had to stay with you?

A. That's correct, Mr. Weinbaum, but let me make this clear to you. You say—infer that I was the controlling owner. I was not the controlling owner. I had a minority [fol. 1589] interest personally.

Q. Yes, sir.

A. My group had bought the control, but I personally did not own the control of the Nashville Bank and Trust Company.

Q. And you were the largest single stockholder among your group?

A. Among my group, but I was a minority stockholder, I did not own control, and I think it's important for you to understand that.

Q. You were the largest single stockholder in the Nashville Bank and Trust Company, is that correct?

A. I understand that I was.

Q. After you became—after your group assumed control of the Trust Company, did you or any representatives of

your group meet with the officers and employees of your bank?

A. Yes. We had a meeting at which time we told the officers and later the employees of the change of ownership.

Q. Approximately when was that meeting?

A. We had a meeting, as I recall it, the date of the public announcement which was on the 23rd of January. I remember I had another meeting with the officers on the afternoon of January 31st. Mr. Hackworth had called me late that [fol. 1590] afternoon and had said that some rumors had gotten out, and he thought it would be well for me to come down and have a meeting with the officers and tell them just exactly what had happened and what our plans were. So I went down and had a meeting with the officers of the Trust Company late that afternoon. That was the afternoon that Mr. Primm told us that he was leaving the bank following the meeting of the officers. We had a meeting with him in Mr. Hackworth's office.

Q. You had two meetings, is that correct, one on the 23rd—or one shortly after the 23rd and one on the 31st with the officers?

A. Well, there were some other meetings later on. I don't remember the exact number of meetings, but I do remember that they were told the date the public announcement was made, and that we did have a meeting on the 31st. Now there were some other meetings later on.

Q. And at this—at these meetings, did you encourage your employees and officers to stick with the new ownership?

A. I don't recall making any reference to that. I just simply went down to tell them what had happened.

Q. And you——

A. And all of the facts about it.

Q. You made no reference to any of the future plans for [fol. 1591] the Trust Company?

A. Not that I recall.

Q. Did you have any——

A. At that time we had made no plans, Mr. Weinbaum. We had not made any plans for the future. It was too soon for us to have formulated any plans.

Q. Did you make any remarks about the fact that it

was your intention to move the Trust Company ahead or did you make any expression of opinion of that sort?

A. Not that I recall. I think we did mention that Mr. Hackworth had agreed to stay on for two years, and we told them about the terms of the agreement and so forth, as I recall it. I don't remember that——

Q. Did the employees know at this time about the five per cent across-the-board salary increase that you had instituted?

A. Yes, I believe they did, because as I recall it, we gave them a five per cent increase in salaries the day after we made the deal. As I recall it, it was right after the time that we had purchased it that we did grant the five per cent increase straight across the board.

Q. And as far as you know, they were all informed of this shortly thereafter?

A. As I understand it, it had been the custom to raise salaries when they were raised the latter part of the year, [fol. 1592] and they had received no salary increase, you see, in December for the following years, so Mr. Hill and Mr. Hackworth felt that this was important, and I agreed to it.

Q. Did you have any discussions with Mr. Primm after you and your associates bought the bank with regard to Mr. Primm's staying on with the institution?

A. The only meeting I had with Mr. Primm was in Mr. Hackworth's office late in the afternoon on January the 31st, following our meeting with the officers.

Mr. Primm, after this meeting, told Mr. Hackworth that he would like very much to see him privately, and I was invited to join them, and we had a meeting with Mr. Primm in Mr. Hackworth's office, and that was the first time that Mr. Primm had told Mr. Hackworth that he was definitely leaving the Trust Company.

It later developed that he had accepted the job, according to Mr. Andrew Benedict, the day after, the day after our group made the announcement. In other words the announcement was made on the 23rd day of January and Mr. Primm agreed to go with the American Bank January the 24th, the day after our group had bought it.

Q. On your deposition, Mr. Weaver, you indicated that there were several men in the Trust Company with good

potential, and I wonder if you would tell us who those people were.

[fol. 1593] A. Well, I discussed that at great length with Mr. Hill and Mr. Hackworth, and I would say that Mr. Overton Thompson, Jr., and Mr. Fitzgerald Parker were probably the two outstanding men that they had.

Now they explained to me very carefully that Mr. Parker was a trust officer, that he had never had any commercial banking experience. They also explained to me that Mr. Thompson had been a trust officer and had had very little commercial banking experience.

As I understood it, they had been trying to bring him over into the commercial banking department, and they would bring in some young men to train in the trust end of the business, but just about the time they would get them trained, they would leave and then he would have to go back there, so they had a very difficult time getting him into the commercial end of the business, and he was not an experienced man in commercial banking, and that was the main problem that we had insofar as Mr. Thompson is concerned.

Mr. Thompson is a very fine man, he's an able man, a man of the highest honor and integrity, but his lack of commercial banking experience was the big problem as far as he was concerned.

Q. What other men in the Trust Company did you consider to have good potential?

A. Well, there were some younger men there that hadn't [fol. 1594] been there too long. There were several younger men that had a good potential like Mr. Hardcastle, for example, John Hardcastle. There were several other younger men, most of the other men were older men, and they were men with specialized training. There wasn't any other man there that was potentially a president of the bank at any time in the foreseeable future.

[fol. 1595] Q. You indicated, Mr. Weaver, yesterday in your direct testimony, that one of the problems of the bank was a lack of college graduates, young college graduates. I am wondering whether you were aware of the fact that, of the officers under forty, there were six; and four of these were college graduates?

A. I knew several of them had graduated from college. Four college graduates is not very many, Mr. Weinbaum.

Q. Excuse me, sir?

A. That's not very many men.

Q. Four out of six under forty years old? That isn't very many?

A. That's two-thirds; but four men is not very many men.

Q. Three men under thirty-two, and two of these three went to college. Were you aware of that?

A. I don't have the records of their educational qualifications. You apparently have that information. How many of those three had graduated from college?

Q. Two of those three, sir.

A. Two of the three?

Q. Yes, sir.

A. John Hardcastle being one of them?

Q. That's correct; and Mr. Cheek, and the other one——

[fol. 1596] A. Mr. who?

Q. Cheek.

A. Cheek?

Q. Yes, sir. Did you speak with Mr. Thompson or Mr. Parker at all with the possible idea of considering them for the presidency of the bank?

A. I did not.

Q. And this was in light of your conversations with Mr. Hackworth and Mr. Hill?

A. I don't remember that. I did have some conversations with them. I thought highly of both of them. We had some discussions. But, as I recall it, I never indicated to either of them that they would be president of the bank.

Q. What qualifications, Mr. Weaver, would you have deemed essential for the president of Nashville Bank and Trust Company?

A. Well, the president of a bank of that type should, generally speaking, be an older man. Of course Mr. Thompson and Mr. Parker would have qualified on that score. But they should have been well versed in all of the phases of banking, in the trust business; and of course they must be prominent and well-known in the community, active in community affairs, as Mr. Fleming has so clearly pointed out to you.

The head of a bank must be a man that is favorably known in the community. He must be a man who has given un-[fol. 1597] selfishly of his time and money to the affairs of the community, charities, educational institutions, religious

institutions. He must be a man of very high regard in the community. And of course he must have ability. He must be a good banker. He must be a man with sound judgment.

Q. These men are extremely rare, are they not, Mr. Weaver?

A. Yes, sir. I told you how difficult I found it to find a man with these qualifications.

Q. And is this not really the ideal set of standards for a bank president?

A. What's that?

Q. Would this not be the ideal set of standards for a bank president?

A. Yes, that's right.

Q. Would it not be the case that very often a bank would employ a person who was either not a banker by previous experience, or is not a native of the city where he takes his president's job?

A. Yes, that's been done. It was done in Mr. Hackworth's case, as I stated in my deposition. I commented at great length about that, what an unusual situation it was with Mr. Hackworth.

Q. With these qualifications that you set out, Mr. Weaver, did you approach any other bankers in the City of Nash- [fol. 1598] ville with respect to the possibility of coming to work for your bank?

A. No. As I recall it, I did not talk to any other bankers in the community about going with the Nashville Bank and Trust Company at that time.

Q. And the reason you didn't do this, Mr. Weaver, was because in Nashville, as a matter of policy, one bank does not go out and hire people from another bank; is that not correct?

A. That has, generally speaking, been the policy over the years. And I think it is a good policy. As a matter of fact, our company has that type policy. We won't hire people with our competitor—the Life and Casualty Insurance Company.

It is also true that we won't hire a combination agent. Our company is what we term a combination company. We write both ordinary and industrial life insurance. We have a policy that we won't hire a combination agent who is working or has worked with any other company.

Q. Did you speak with anybody in local business or in-

dustry exploring the possibilities of coming to work for the Trust Company?

A. Not that I recall. We gave an awful lot of consideration; my associates and I have devoted many hours to this problem, trying to see if we could come up with somebody [fol. 1599] who would be qualified to take Mr. Hackworth's job.

That was the number one problem, Mr. Weinbaum. Mr. Hackworth had agreed to stay on for two years. His replacement was the number one problem. There were other personnel problems, too; but that was the number one problem—to develop another leader to take his place.

Q. You had preferred to find somebody from within Nashville?

A. Preferably. Nashville is an unusual town, and a man who has connections with the old families here, who has been born and raised here and who has lived here for generations, or who has lived in Middle Tennessee, which is very important, in my opinion.

Q. But you approached nobody in Nashville even on a very exploratory basis with regard to employment at the Trust Company as president?

A. We gave a lot of thought to a man in Nashville, but we couldn't think of a man that would exactly fit this bill. I can assure you that we gave many hours of consideration to this problem.

Not only did I consider it, but my associates in the purchase of the Trust Company considered it.

Q. In looking for management, Mr. Weaver, you testified yesterday that you and your associates talked to a great many people in the banking and financial industry about [fol. 1600] the problem of management.

A. We did.

Q. And these conversations, I presume, occurred during the approximately five and a half weeks between your purchase and the time you entered into serious discussions with Mr. Fleming on February 22; is that correct?

A. Well, I think it was about seven weeks, wasn't it? I don't remember the exact number of weeks. It was about a seven-week period, as I recall it, between the time we purchased the controlling interest in the Trust Company until we made the deal with Mr. Fleming.

I suppose five and a half weeks is——

Q. You did indicate it was on February 22 that you were discussing seriously with Mr. Fleming.

A. That's right, at a breakfast meeting, as I recall.

Q. Yes, sir, and that would have been a period of five and a half weeks. You indicated that all but one of these inquiries and communications was oral, and there was one written communication in connection with the management situation at the Trust Company and your desire to do something about it.

A. I can recall only one letter that I wrote about the management problem.

Q. And that was a letter or a series of communications [fol. 1601] between you and Mr. Buck. Is that correct?

A. Yes, Mr. Charles Buck, president of the United States Trust Company of New York.

Q. And he is a friend of yours?

A. Yes, he is. He and his wife and family are good friends of mine, and business associates, too. We have done quite a bit of business with the United States Trust Company.

Mr. Weinbaum: With Your Honor's permission, I would like to hand the witness a copy of Government Exhibit 18.

The Court: All right.

By Mr. Weinbaum:

Q. The letter of January 30, Mr. Weaver, which is at the bottom: Was that the first in the series of communications between you and Mr. Buck on the particular subject covered here?

A. That's right.

Q. And this letter appears to have been written on some sort of a memo paper in that the margins are——

A. Well, it was written on my personal stationery. As I recall it, it was written on my small stationery. Letters of this type are usually written on my small stationery.

Q. Could you please tell us what the purpose of this January 30 letter was, in your opinion?

[fol. 1602] A. Well, in the first place, I stated in the first paragraph that I was enclosing a story from The Nashville Tennessean, and I thought he would be interested in it. And I said in the second paragraph: "You and Peggy"—

that's his wife—"have always loved Nashville. Are you available?"

I told him we enjoyed having Mr. Grady with us today and tomorrow—Mr. Grady being a vice-president of the United States Trust Company.

That letter was, you might say, facetious to a degree. But I really had hopes that we could interest Mr. Buck in coming down here to Nashville.

Q. Did you call him and follow up this letter with any conversations?

A. I have conversations with him from time to time. I don't recall talking to him on the telephone. I did talk to him subsequently. I usually see him when I am in New York.

If he wasn't available now, I had hopes that maybe he would be interested in taking early retirement and coming down here to Nashville to live. Mr. Buck lives out at Darien, Connecticut. He spends two hours commuting to New York and two hours going home in the evening—four hours a day.

He and his wife had told me on a number of occasions how he never sees the daylight in Darien during the winter months. I had hoped that maybe Mr. Buck would be inter-[fol. 1603] ested in taking early retirement and coming down here to Nashville. He would have been an ideal man for the job that we had in mind.

Q. On February 3 he indicated that he was not available. Is that correct?

A. Well, that's what he said. He said: "Peggy and I had packed our trunks and were ready to move to Nashville when someone reminded me that I have passed the age at which most pension funds are closed for the last time. So I guess you'll have to go it alone. Good luck"—and so forth.

Q. You had no further conversations with Mr. Buck on this matter at or around this time?

A. No, not within the next few days that I recall.

I did talk to him on the telephone. We could have been talking about another matter and it could have been mentioned. But to my knowledge we had no further conversations within the next several days following the receipt of his letter.

Of course I acknowledged his letter, which you have here,

just as he was leaving for a vacation trip in the Virgin Islands. I probably saw him or talked to him a short time after he got back.

Q. Mr. Weaver, was this intended to be an earnest solicitation of Mr. Buck's services?

A. Yes, it was. It was not facetious. As I said to you, [fol. 1604] it was facetious to a degree; but I had hoped, and we had talked about it—some of my associates that were in this field had talked about Mr. Buck seriously. Mr. Buck and his wife are close friends of ours. They have visited in my home. We have visited in their home. They are close personal friends.

We had hoped that we could interest them.

[fol. 1605] Q. How old was Mr. Buck at that time?

A. Mr. Buck at that time, I would say, was about fifty-three or four years old. I don't know his exact age.

Q. And how large is his bank in New York, do you know?

A. Well, the bank itself is not too large. They have substantial deposits, a few hundred million dollars, but it's primarily a trust company. They have a large trust business.

Q. And you expected him, Mr. Weaver, on the basis of communications of this sort to say yes, that he was available?

A. I expected to find out from the correspondence whether he was interested in discussing it any further. I didn't expect to make a deal with a man through an exchange of letters.

Q. Did you discuss at all at any time with Mr. Buck possible financial arrangements in regard to his employment?

A. We didn't get into that. He could not have afforded to retire at that time because of his age, and what I had hoped was that maybe he could take early retirement at fifty-five, six or seven, as many men do. More and more men are retiring now at early ages.

Q. Mr. Weaver, with this management problem on your [fol. 1606] hands, did you seek the assistance of any management recruitment firms or inquire of them how they might be—might have been of help to you?

A. We talked a little about that, but it would have taken a good bit of time to do that. Those studies. I mentioned in my discovery deposition that we gave a little thought

to having some management firm come in. I have used firms of that type on many occasions, and those studies usually require a good many months.

Q. Excuse me, Mr. Weaver, what I meant was whether or not you went to any personnel recruitment people?

A. No, I did not go to any personnel recruitment people at that time.

Q. You are aware of the fact, are you not, that there are people in the business of assisting in finding qualified——

A. Yes.

Q. —competent professional people?

A. I get letters from them all the time. I'm familiar with firms of that type.

Q. You didn't feel that this would have been worth exploring?

A. No, I did not. I felt with all of the connections that we had and that our group had, that we were in better position to explore that than a personnel recruitment firm.

[fol. 1607] Q. You felt that your——

A. I don't like the idea of hiring the president of a bank through a personnel recruitment firm, Mr. Weinbaum.

Q. You did feel you had enough contacts throughout the country so that if anybody was to be found, you would find them, is that right?

A. Well, I'm not saying that many contacts, but my associates and I had a tremendous number of contacts throughout the country.

Q. Yes, sir.

A. We have bankers call on us all the time, Mr. Brooks who was then our senior vice-president and chairman of the Finance Committee, he's now president, he and I talked about it at great length, we have bankers call on us from all over the country, and we discussed this matter at great length.

Q. And you call on bankers throughout the country?

A. Yes, we do. We call on bankers. Bankers are of great assistance to us in many areas of our operations. I send out teams of men to call on bankers to try to make private placement investment deals and we have a very close working relationship with the banking industry.

Q. Did any of these bankers or financial contacts through-[fol. 1608] out the country put you in touch with any likely

candidates for the presidency of Nashville Bank and Trust Company?

A. No, they did not put us in touch with any specific individual.

Q. Did you get one single lead from any of these people?

A. We talked about several individuals.

Q. Did you meet personally with any of these folks?

A. No, we did not.

Q. How much did you figure you would have to pay a new president, Mr. Weaver?

A. Well, after we started talking to all of our friends, I found that the salary of a president would be a good bit higher than I had anticipated. Most of the people I talked to seemed to think that we probably would have to pay a man fifty or sixty thousand dollars a year, and that we might also be required to give him a stock option or some other fringe benefits that would make the proposal attractive to him.

There is a tremendous shortage, Mr. Weinbaum, in top management in this country. I don't know of a greater shortage today than in top management. Every company is looking for top management.

[fol. 1609] Q. Is it your view, Mr. Weaver, that you made any sort of an earnest solicitation to find a president for the bank?

A. Yes, I think we explored it rather carefully in the five and a half week, seven week period between the time we purchased the Trust Company and the time we signed the merger agreement with the Third National Bank.

Q. And do you believe that five and a half weeks was a sufficient amount of time for finding a president?

A. Well, it could have taken a little longer than that.

Q. And based on your search, you were convinced that you couldn't find one?

A. Well, it would have been very difficult to find a man, Mr. Weinbaum, that was imminently qualified for the job. I knew of a good many banks that had brought in outside presidents, and I knew of a good many instances where they had been a complete failure.

I knew of one bank that had brought in several men all of whom had failed to do the job and to measure up to the bank's expectations.

Q. And you know of some, don't you, Mr. Weaver, that have come in from other cities and measured up quite nicely?

A. That's right, there are some examples of that.

[fol. 1610] Q. You mentioned, Mr. Weaver, a sixty thousand dollar salary for the president of the Trust Company. Do you know whether or not this would be competitive or more generous in comparison to salaries of other bank presidents in this city?

A. Well, I think you would have to make a man a little more attractive deal probably than the deals of some of the other men, salaries of some of the other men who were already established who had other interests, who had a substantial stock interest in the bank. There are many factors that you must take into consideration.

Q. Were you aware of the fact that when Mr. Hackworth came to work for the Trust Company, that he was offered a very generous stock option?

A. Yes, I was. I think that's the way Mr. Hill secured Mr. Hackworth's services.

Q. And you probably——

A. It certainly wasn't the salary that interested him.

Q. And you probably could have done the same thing if you had found——

A. Mr. Hackworth was a man—when he went to work for the Nashville Bank and Trust Company, he was in his sixties, and he wanted to remain in Nashville the balance of his life. Mrs. Hackworth liked Nashville, and there [fol. 1611] were a lot of factors that entered into his decision to stay here rather than to go to Louisville with the L&N Railroad where of course he was offered a very important job.

Q. And you could have offered, it was possible that you could have offered a president these same type of inducements, could you not?

A. We probably would have been forced to do so in order to get the type of man we wanted. You are familiar of course with the stock options that are granted executives throughout American business and industry.

Q. Yes, sir.

A. We even have a stock option plan for our officers in our own company.

Q. Is it your testimony, Mr. Weaver, that you learned substantially more about the management problem after you bought the bank than you were aware of prior to purchasing it?

A. That's certainly correct.

Q. And this is based, is it not, on your exploration of the problem among your colleagues in the banking industry?

A. That's right, and on going into it in greater depth.

Q. And you didn't speak with one single likely candidate for the position of presidency of the bank?

[fol. 1612] A. I think Mr. Buck was a likely candidate; I spoke to him.

Q. You wrote——

A. Wrote him a letter.

Q. Sure. Was it your opinion, Mr. Weaver, that you and your associates could not make this bank as successful or more successful than it had been in the past because of the fact that in this five and a half week period you could not find a president?

A. Well, Mr. Weinbaum, we found that the problems were so great and so difficult that unless they were remedied, we felt that the bank couldn't maintain the position that it had occupied for the past few years.

Q. Could you explain, Mr. Weaver, what the exchange was between Third and Nashville Bank and Trust Company

A. We received four and one half shares.

Q. And that was the equivalent——

A. Of Third National Bank for one share of Nashville Bank and Trust.

Q. And that was the equivalent of how much a share for the Nashville stock?

A. Well, let's see. I don't recall the exact market of the Third National Bank.

Q. Would it have been approximately $420.00?

A. Let's see——

[fol. 1613] Q. That is the exchange.

A. The market had varied around eighty to ninety. I don't remember the exact price. If it was ninety dollars a share, that would be three sixty plus forty-five. That would be $405.00 a share.

I would say that it was somewhere in that area, four

hundred—a little over four hundred. I don't remember the exact market of the Third National stock. The market in that stock is a thin market like the market of many of our over-the-counter securities here in Nashville. The markets are thin. They run up and down. When you put a big order in to buy or sell, either one, you can run the market up or down several points.

Q. And this exchange took place two months after you had purchased—your associates and you had purchased the stock for $350.00?

A. That's correct; approximately two months.

Q. And you bought without the intent to merge?

A. That's right, absolutely.

Q. And it was what you learned after you bought the stock that changed your mind?

A. That's right.

Q. Wasn't it Mr. Fleming that really illuminated the bank's so-called problems for you, Mr. Weaver?

A. Well, our first conversations were with the Com- [fol. 1614] merce Union officials as I stated yesterday.

Q. Did they go into the problems of the bank with you to any extent?

A. We talked about some of the problems. I remember the Commerce Union people indicated that they had just bought a computer which was being installed and——

Q. They had bought this computer in January of '64, or just recently.

A. I don't remember. It hadn't been installed, you know you have to order these computers ahead of time.

Q. But Commerce Union was just installing its computer?

A. They were installing a computer at that time. The other two major banks had already installed computers as I recall it.

Q. Would you say that Mr. Fleming more than any other single person illuminated the problems of the Trust Company for you?

A. Yes, I would say that he did. He certainly very forcefully brought to our attention the problems. Of course you must remember that we had already discovered many of these problems when we started our study in depth.

* * * * * * *

[fol. 1615] Q. The letter agreement, Mr. Weaver, of March 5, 1964, Government Exhibit 478, written to you from Mr. Fleming, speaks of a $420.00 per share figure, and I was wondering, in connection with that figure, what was intended?

A. Well, the letter is very clear, Mr. Weinbaum. Why don't you read the letter into the record?

Q. Well, I won't take the Court's time, Mr. Weaver. I would ask you one further question. There is a provision that should the regulatory agencies prevent the merger that Third National Company would pay you $420.00 a share.

A. That's right.

Q. And Mr. Fleming was willing to pay this in spite of the many problems that he so forcefully pointed out to you?

A. I presume so.

Mr. Weinbaum: Yes, sir. We have nothing further, Your Honor.

Redirect Examination.

By Mr. Hunt:

Q. Mr. Weaver, will you state again the date you agreed to buy and you signed an agreement to purchase the majority of stock in Nashville Bank and Trust Company?

A. January 13, 1964.

Q. And on what date did you and your associates make [fol. 1616] an agreement with the Third National to merge?

A. On March——

Q. Subject to the contingencies?

A. On March 11th.

Q. Is that five and a half weeks?

A. No. sir, that's two months, the way I figured it.

Q. Now on this stock option, did you understand that Nashville Bank and Trust Company gave Mr. Hackworth a stock option or that Mr. H. G. Hill gave him a stock option to buy some of his stock or the H. G. Hill Company's stock.

A. Mr. Hill gave Mr. Hackworth, as I understood it, an option to buy some of the stock owned by the H. G.

Hill Company. The Nashville Bank and Trust Company was not involved in that arrangement at all.

Q. Mr. Weaver, you have been questioned about your discussions with people regarding management problems and a possible successor to Mr. Hackworth. Would you please name and identify some of the people with whom you talked regarding that problem?

A. Yes, sir, I'll be glad to.

I talked to many people who are not on this list, but these are names that I can document where I had an appointment on my appointment book or correspondence [fol. 1617] with reference to an engagement, can all be documented.

I of course mentioned Mr. Buck, and the exchange of correspondence I had with him.

I also talked with Mr. Frank Grady who is vice-president of the United States Trust Company. He's now senior vice-president. He was a vice-president at that time.

Mr. Grady was in Nashville on January the 30th and 31st, and had lunch with me on January the 31st in my office.

I talked to Mr. William Keesler who at that time was senior vice-president of the First National Bank of Boston. As a matter of fact, I had dinner with Mr. Keesler in Chicago the middle of February, 1964.

And also at that same dinner meeting were Mr. Everett Matson, executive vice-president of the T. J. Bettis Company of Houston, Texas. Mr. Matson is a director of a Houston Bank, a medium-sized bank that is slightly larger than the Nashville Bank and Trust Company. I had a very interesting discussion with him about the problems that they had in this medium-sized bank.

Also at that dinner meeting, the middle of February in Chicago, was Mr. W. W. Bass, who is president of the American Security and Trust Company of Oklahoma City, Oklahoma. Mr. Bass is a former president of the Mortgage [fol. 1618] Bankers Association of America, and he has many banking connections.

Another gentleman was Mr. John F. Austin, Jr., who is president of the T. J. Bettis Company of Houston, Texas, which is the world's largest banking firm with a mortgage servicing account of over a billion and a half

dollars. Mr. Austin is also a former president of the Mortgage Bankers Association of America. He was formerly vice-president of the First City National Bank of Houston and he is currently a director of that bank.

I also talked with Mr. Carl McGraw who is president of the First Union National Bank of North Carolina with headquarters in Charlotte, North Carolina. This is a very large bank. They have deposits of over six hundred million, and they have eighty-seven branches, at least that was the last figure I had, located throughout the entire state of North Carolina.

Mr. McGraw was in Nashville on February the 25th, and 26th, 1964. He was accompanied to Nashville by Mr. C. C. Cameron who is president of the Cameron-Brown Company of Raleigh, North Carolina, and he is currently vice-chairman of the Board of the First Union National Bank in addition to continuing the presidency of the Comeron-Brown Company. At that time Mr. Cameron was the incoming president of the Mortgage Bankers Association of America.

[fol. 1619] These are people that I can document, as I stated.

I also talked at great length about the management problem with several of my associates at the National Life and Accident Insurance Company, all of whom were associates in the deal to purchase the Trust Company, including Mr. Edwin W. Craig, at that time chairman of the board of our company; Mr. Eldon Stevenson, Jr., vice-chairman of the board at that time; Mr. G. D. Brooks, who was senior vice-president and chairman of the finance committee—he is currently president; and Mr. Walter M. Robinson, Jr., associate general counsel at that time—he is now vice-president and general counsel.

There were also others in the group that we talked to. I just mentioned these four men.

These gentlemen were also talking at the same time about management problems with many of their friends and connections in the banking and financial industry. I think this is a representative list, Mr. Hunt, of people that we talked to.

We finally concluded at the end of these discussions—

we had many lengthy discussions. I think the last meeting I had with Mr. Craig lasted probably three hours.

We finally concluded before we agreed to the merger agreement with the Third National Bank that, if one of [fol. 1620] us, one of our group, was unable to go down there to the Trust Company and devote full time to its affairs—I would like to say right here that none of us in the group had any commercial banking experience, and that was a serious problem.

But we concluded that if we were unable to devote our full time to the affairs of the bank, it would be in the best interests of the customers of the bank, the employees of the bank, the stockholders of the bank, and the Nashville community, for us to merge with the Third National Bank.

Q. What have you been reading from, Mr. Weaver? Is that something you prepared—I mean, the list of names?

A. Yes, something I wrote last night out at my house.

* * * * * * *

[fol. 1621] Ward Howell, a witness called by and on behalf of the Defendant Banks, was first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Hooker:

Q. What is your address, Mr. Howell?

A. 122 East 42d Street, New York City.

Q. What line of business are you in?

A. Executive recruiting.

Q. When did you organize your firm?

A. In 1951.

Q. What was your career prior to that time?

A. I graduated from Yale in 1932; joined the investment banking firm of Bonbright and Co.; was there for ten years. That firm closed its doors when the war came along, and I joined the Army Air Force as a contract renegotiator.

Toward the end of the war I was transferred to the

[fol. 1622] Federal Economic Administration, and as such had a good deal to do with problems in the sterling bloc area.

As a result of this, shortly after the war I was offered a position with a company called the Middle East Company, to go to Egypt and see what I could do about promoting trade between the United States and the countries of the Middle East.

Unfortunately this didn't work out too well due to the shortage of dollars. So I came back and attempted to get a job in Wall Street. This was in 1947 and things were not going so well.

So I was not able to do this. But I accepted a position with the large consulting firm of McKenzie and Co. in charge of their executive recruiting. This worked very well. Things couldn't have been going better, when McKenzie decided there was a conflict of interest between recruiting and their regular consulting work.

So they decided to give this up and offered me another position within the firm. However, I liked recruiting and found it had gone very well. So I decided to open my own firm, which I did in 1959 and have confined myself to that activity ever since.

Q. How does your firm compare in size with other firms in the industry?

A. That's a difficult question to answer. In terms of [fol. 1623] number of principals, we have twelve, which is probably as large as any firm in the business. In terms of responsible positions filled, I suspect—I do not know—that we probably handle more top openings than any other firm in the country.

Q. Do you recruit only for industry?

A. No. That is a major segment of our work. If you are familiar with Fortune's list of the 500 largest industrial companies in the United States, we serve or have served one out of four of those 500. On the other hand, we have worked for schools, hospitals, insurance companies, banks, and so forth.

Q. What type of personnel do you recruit, sir?

A. Well, we recruit executives. Defining "executive" is a pretty difficult thing to do. So we arbitrarily say an executive is a man who is earning $20,000 a year or more.

In other words, we look for men from that salary bracket on up.

Q. In what fields do you recruit?

A. Well, as I said previously, pretty much any field where there is a need for a man to handle a responsible position.

Q. Give us the names of some of the corporations that have employed you.

A. This is a difficult thing to do because most of our assignments are extremely confidential. I can say, however, [fol. 1624] as appeared in the press recently, we found a president for Western Union not long ago. Some years ago we got a man who is now president of American Motors. We work for many of the large companies and banks throughout the United States.

Q. To what extent have you done recruiting in the banking field?

A. We have done a great deal of banking recruiting. I have obtained permission from some of our banking clients to use their names so that you will have an idea of some of the banks we have served.

Incidentally, this work is usually done with a chief executive or chairman of the board. So you will notice here as I read off these names that you get some idea of the quality of the positions that we worked on. These people have given us permission to use their names.

Mr. Thomas Gage, chairman of the board of Morgan Guaranty Trust Co. Mr. J. Howard Laeri, vice-chairman of the First National City Bank of New York. Mr. Louis Lunborg, chairman of the board of the Bank of America. That is the largest bank in the country, as you know.

Mr. Charles DeBrantville, president of the Bank of California. Mr. William Jenkins, chairman of the Seattle-First National Bank. Mr. John Davis, president of the First National Bank of Omaha.

[fol. 1625] Mr. Lawrence Martin, president of the National Shawmut Bank of Boston. Mr. William Pope, president of the Philadelphia National Bank. I beg your pardon; of the Provident National Bank.

Mr. Fred Lybrand, president of the Bank of Commerce. And Mr. Donald Bresser, president of the Toledo Trust Company.

Q. What is the nature of the recruiting assignments you generally receive?

A. The assignments we receive for recruiting are almost always those where the company or the institution is unable to find their own man. When be it a bank or a school or anybody else that needs a man, logically and correctly they look within their own ranks. Many of these firms, such as Standard Oil of New Jersey, have everybody on electric data processing cards.

They can push a button and find out in five minutes whether there is somebody in the company that can fill the job. But assuming they can't do that, and the job is of sufficient importance, it is discussed with the top-level people within the company, with the board of directors, and they in turn attempt to come up with names.

When this isn't possible—and this usually takes several months—sometimes they will go as far as advertising in the newspaper for a man. All these things having failed, [fol. 1626] they come to us and say, "Would you be willing to undertake an assignment to find a man to fill a certain position?"

Q. How is your fee determined, sir?

A. Our fee structure—while rather expensive—is a very simple one. We charge for successfully finding a man twenty-five percent of his first year's annual compensation. This is salary plus agreed upon bonus.

While we are looking, each month we charge a progress amount based on what we have accomplished or what we think we have accomplished in that particular search. Out-of-pocket expenses are in addition.

The sum of these progress reports are billed monthly, but credited against the fee.

To give you a specific example, let's assume we have been asked to find a man whose total compensation will be $40,000 a year. Our fee when we successfully find him would be $10,000.

During the period of months that we have worked on this we might have billed $2,000 the first month; $1,500 the second month; and $500 the third, or a total of $4,000. So the net bill is then $6,000 when the man is found.

Q. Do you ever turn down an assignment?

A. We do.

Q. Why?

[fol. 1627] A. There are a good many reasons for this. We turn down probably one assignment a week. Some of them—the obvious reason is they are under $20,000 a year. The others, they are unrealistic in what they want for what they are willing to pay or unrealistic in the job specifications themselves.

For instance, some years ago we were asked to find a safety engineer for one of the big mining companies in South America. They wanted a man who knew safety provisions in both surface and underground work.

This is not a combination that comes together. So we told them we couldn't get such a man. Actually we later got two assignments to find one surface man and one underground man.

Another reason for turning down an assignment is that the company has a reputation for high turnover, where it is just not a good place for a man to work. We also won't tackle an assignment if we don't think we can fill it. Our reputation depends on filling jobs. It's not worth it to us if we don't think we can fill it for one reason or another.

Q. What percentage of the assignments that you actually take do you fill?

A. Only about half. I tell you the reason for this. It's easier to cite this by example rather than by theory. [fol. 1628] Some months ago one of the large chemical companies came to us and said they had invented a plastic pipe that would be replacing copper piping for the use of home hotwater systems. They needed a man to run this division.

We undertook the assignment. We were coming along very well with it when they discovered a small company whose management they could buy that knew this particular problem. So they bought the company and canceled the assignment.

* * * * * * *

Q. State whether or not it is a part of the responsibility of your company to recommend men from within companies which hire you if they have the best qualified man to fill the position.

A. Yes. This happens from time to time. We had [fols. 1629-1633] the assignment two years ago to find the president of a large well-known shoe company. The chairman of the board asked us to weigh the abilities of three men within the company, as well as looking outside. We did this, and decided that one of the men he had already on his payroll, knew the problems of the company and had set a fine record inside, should be promoted; and we so suggested and this was done.

* * * * * * *

[fol. 1634] Q. Now does this technique differ for bank executive recruiting, basically differ?

A. No, not basically, except in one very fundamental respect. When you get an industrial company needing a man, they'll often take a man from outside their own industry. When you get a bank looking for a man, they pretty well have to have a banker, so that it makes the search a good deal tougher for banks or for lawyers, for instance we do quite a bit for the legal profession, than it does for an industrial client.

Q. Now what has been your experience with respect to recruitment of banking personnel?

A. Well, we have done a great deal of it. You've got another problem in recruiting banking personnel, and that is this, that the banker has to be, to some extent, a community figure. Let us take Nashville as an example. If you brought a man in here to manufacture pencils, assuming that he was a good, conscientious fellow who knew his business, he could lead a successful career, but if you tried to bring a banker in here, no matter how good a banker he was, if he didn't fit the community image and wasn't acceptable, it just wouldn't work. This is just one more difference in finding bank personnel.

Q. Mr. Howell, I show you now a chart marked Defendant's Exhibit 15, and ask you if you had studied this [fol. 1635] chart, and if you are prepared to comment on this?

Have you had an opportunity to study it?

A. Yes, sir.

Q. What is your opinion as to the likelihood of obtaining such men as are on this chart such as chairman of

the board, if in Nashville the chairman of the board is normally an active banking officer and has extensive amount to do with the success of the bank?

A. Well, first commenting on this chart itself, your first question, this is really a shocking example of lack of planning on the part of the management of this bank. Most corporations, as you know, have mandatory retirement at the age of sixty-five, and as you look over the principal positions, the ages of the principal people in this bank, there are, one, two—well, two vice-presidents under the age of fifty. There apparently has been no thought given to a continuity of management here.

Q. And what is your position with respect to obtaining a chairman of the board?

A. I think if you had a bank that was going to be revived and coming along well, you could get locally a man of some stature to accept the position of chairman of the board.

Q. Chairman of the board?

A. Yes.

[fol. 1636] Q. And what is your opinion of the likelihood of obtaining for the bank represented by that chart a president?

A. Well, it's a search we wouldn't undertake. There are too many holes in this picture. The problem here is, as I see it, that you would need a young, vigorous, hard-hitting fellow to come in and really turn this bank around. Now——

Q. Now what sense do you mean turn it around?

A. Well, revitalize, bring other young men underneath him throughout the organization.

Q. I see. Now what is your opinion with respect to obtaining a vice-president to be in charge of the banking department in place—to take the place of the man who was in charge of the banking department?

A. Mr. Young; this could be done if you had the right president. The whole thing hitches here on the chief executive officer, in my opinion.

Q. Now what is your opinion with respect to obtaining a man to be vice-president in charge of the mortgage department?

A. Well, these fellows are scarce as hen's teeth. We had

a very good assignment with a high price for a major New York City bank to find the head of a mortgage department, and we searched diligently for over a year, and finally got a man in Hawaii to take this job. These are [fol. 1637] awfully scarce fellows, good ones.

Q. What would be your opinion with respect to the availability of a replacement of a man in the vice-president for the new business department?

A. I would think that a new business man should probably be a local citizen, a man known and liked and respected in this community. Now whether there are men, or whether there is a man in one of the other banks here that would be willing to move over and you could offer him sufficient inducement, I don't know. I don't know the reputation of this bank enough locally.

Q. How wold it affect your opinion about that if it were a fact in this community that it is very rare for any bank to obtain from any other bank banking personnel?

A. Well, that's generally true. In fact, the major New York City banks won't move one man from another, and I would assume that would be true here, and I would think it would be darn near impossible here.

Q. What would be your opinion as to the possibilities of obtaining a man represented by this chart, a vice-president to head the real estate department?

A. That's a tough question, and I don't really know enough about this real estate department to answer correctly, but here again, if you've got local real estate problems, if he has to know about farming, let us say, and [fol. 1638] local difficulties of real estate, you probably have got to get a man from this area also.

Q. How would it affect your judgment about the difficulty of filling these position if all of them needed to be filled in a relatively short space of time, say two years?

Mr. Weinbaum: Your Honor, we object. There's no showing at all that these positions had to be filled within two years. There's no foundation at all for this question.

Mr. Hooker: If Your Honor please, the chart shows that every position I have asked about, the man has either resigned, died or retired in the two years succeeding the date of the chart.

Mr. Weinbaum: The date of the chart is January 1, 1964.

Mr. Hooker: And this chart shows that every position about which I have asked was filled at that time by a man who is either deceased, retired, or resigned.

The Court: Every man you have asked about——

Mr. Hooker: Yes, sir.

The Court: Is deceased——

Mr. Hooker: Retired or resigned.

Mr. Weinbaum: Not as of January 1, 1964, Mr. Hooker.

[fol. 1639] Mr. Hooker: If Your Honor please, I feel that it's competent for us to ask him the hypothetical question.

The Court: Well, the approximate period of two years.

Mr. Hooker: This is a hypothetical question.

The Court: Yes. Let him answer.

By Mr. Hooker:

Q. Would you like for me to read the question?

A. May I answer that now?

Q. Yes.

A. I previously mentioned how long it took to fill that mortgage department job for another bank. When you get into a situation that is like this, I think it would be almost impossible to fill these positions with any given period of time.

Q. Now the one way you might do it is by a movement of a complete management of another bank into this. I mean I mentioned——

Q. What do you mean by that, sir? How would you obtain a complete management of another bank?

A. I mentioned a chemical company that was making a plastic pipe where they obtained management by buying another company.

[fol. 1640] Now if this bank could some how or other go out and buy the entire management of another bank, you might do it, but I would hardly think that was possible.

Q. How could you do that without either buying the other bank or merging with it?

A. I don't know that you could.

Q. Now how would it affect your judgment about each of these positions, or all of them, for there to have been

no funded pension plan at the institution at whose chart you are looking?

A. Well, that just makes the whole problem more difficult. There is such a demand for bank executives today that banks are putting in pension plans, fringe benefits, everything else they can to attract and ones they have attracted, hold a man when they get him.

Q. How would it affect your judgment about the availability of personnel to fill each of these positions for there to have been fringe benefits at this institution below the average provided by the larger banks in the community?

A. Well, I would have to give the same answer here; I don't see how they could attract people.

Q. How would it affect your judgment about the possibility or probability of filling each of these positions for the bank to be closely held by a group of investors in [fol. 1641] a community who had no previous banking experience, and who were for the most part life insurance executives who did not desire to actively participate in the management or on the board of directors of a bank.

A. Well, this ownership situation just complicates the thing still further.

Q. Why?

A. Because capable executives do not like working for people that don't understand what they are doing. This is to some extent evident today in the tremendous interest and emphasis placed on stockholders' meetings where the management of companies are going all out so that they will be—what they are doing will be understood by their owners. We recently moved a man from a position where he was making a base salary of sixty-five thousand dollars a year because the owners of this particular company couldn't visualize the plans that he had for the growth of this company and just kept hamstringing him all the time, and he finally threw up his hand and said, "I've got to find another position, this is too thwarting." And the same thing might happen here.

Q. Is it more or less difficult to find management for companies which are closely held as opposed to those which are broadly held?

A. Oh, yes. Yes.

[fol. 1642] Q. Oh, yes, what?

A. I beg your pardon. It's much more difficult to find management for closely held companies.

Mr. Weinbaum: Excuse me. Your Honor we ask that this question and answer be stricken. There's no evidence in the record that the Trust Company was closely held at the time that Mr. Weaver purchased it, that is after he purchased it, and questions about being closely held we don't think are applicable, and he testified to the contrary, Your Honor.

The Court: How's that?

Mr. Weinbaum: Mr. Weaver testified to the contrary that the bank was no longer closely held as of the time of the purchase.

The Court: You mean just before he purchased, it was not closely held?

Mr. Weinbaum: No, after Mr. Weaver purchased it, it was not closely held.

The Court: I thought he was—well, I guess he's asking about the period after he purchased it.

Mr. Hooker: If Your Honor please, maybe we could talk about what I mean. I think maybe the problem is definition of closely held.

By Mr. Hooker:

Q. If a majority of the stock was held by one group, [fol. 1643] most of whom were associated with one company, would you regard that as a closely-held company in the context of my question?

A. Yes.

Q. Now how would it affect your judgment if a substantial percentage, say thirty per cent of the deposits of this institution had come from sources directly or indirectly connected with the family or business of the chairman of the board, who resigned immediately prior to the transfer of stock to the new owners?

Mr. Weinbaum: Your Honor, we object to this question. There is evidence in the record that Mr. Hill was still associated with this bank.

The Court: Associated, yes, in a way, but not to the same extent he was previously. I think that's competent. Go ahead.

The Witness: Well, this reveals another weakness in the bank. We have had difficulty in finding men for companies where there was one customer, for instance, namely, the United States Government.

Executives want to work for a company where the business is diversified or is not dependent upon one source, one customer.

By Mr. Hooker:

Q. How would it affect your judgment of the avail- [fol. 1644] ability of the persons to fill positions asked about on this chart if this bank had enjoyed reasonably rapid growth from 1955 to 1960, but had had three years of modest growth thereafter?

A. Well, it would begin to indicate that the sins of omission were beginning to show. In other words the lack of future planning in all departments whether it be in building up personnel or attracting new business, or whatever it might be, would indicate a further weakness in this situation.

Q. How would it have affected your judgment of the availability for the bank to have had the following problems in addition to its management problems, a lack of branches.

A. Well, really, the same answer applies. There was no thought given to the future of this bank; it seemed to be operating on a day-to-day basis.

Q. Lack of automation?

A. Same thing.

Mr. Weinbaum: We object to this line of questioning. This man is a management expert, and now Mr. Hooker is asking him about what the effect of branching and automation, and I assume he will go on, has with regard to the hiring of a man. We don't think that——

The Court: I'm assuming that it's his opinion there is [fol. 1645] a relationship.

If you were going to seek someone to take these positions with this bank under these conditions, would the lack of branch banks play a part in the availability of competent personnel?

The Witness: Very definitely. Everything to do with the progress this bank is making or not making, branch

banking has become very much the thing; automation is here, and so forth. All of these things have a bearing on whether you can find a good man or not.

The Court: All right, go ahead. He's competent to express an opinion.

By Mr. Hooker:

Q. No adequate audit department to guard against defalcation?

A. That's the same answer

Q. Lack of adequate credit department?

A. Same answer.

Q. Lack of sufficient personnel?

A. Same answer.

Q. Old or antiquated main banking office?

A. Same answer.

Q. Now would Nashville's geographic location have affected your ability to obtain competent management replacement?

[fol. 1646] A. No, I don't think so. There are many outstanding local banks throughout the country, or companies throughout the country—take, for instance, Xerox up in Rochester, New York. It has been able to attract outstanding men.

So it is not the geographical location nearly as much as the reputation of the institution itself and whether it is moving forward.

Q. I now show you Defendant's Exhibit 44 and ask you if you have had an opportunity to study this exhibit?

A. Yes. These salaries are surprisingly low. I base that not on my judgment, but rather on a study made by the American Management Association entitled, "Executive Compensation Service." This was published in November 1965.

Q. Excuse me, Mr. Howell. For the purpose of the record, would you clarify which column of salaries on Exhibit 44 you refer to?

A. Yes. Let's be specific. These are banks and trust companies with asset groups in the $25 million to $50 million range. These are median salaries.

Mr. Weinbaum: Excuse me, Your Honor. Is this a national survey?

The Witness: Yes.

Mr. Weinbaum: I would like to ask at this time as to whether there is any comparison between regions of the [fol. 1647] country—that is, the Southeast as opposed to the nation as a whole? If there is not, Your Honor, we suggest that this particular testimony and this particular survey is irrelevant to the inquiry.

We believe there is a significant difference in salaries in one part of the country as opposed to salaries in another part of the country. The important thing is what the salaries in this particular locale—the southern part of the country—might be.

Mr. Hooker: It seems to me, if Your Honor please, he can cross-examine him about that.

The Court: I think so. Or you could ask him some preliminary questions as a basis for objection. You are looking at which column—the lefthand salary column as you look at this exhibit, the one to your left?

The Witness: Yes. To answer his question, this is not done by geographic—this particular group is a compilation of thirty-one banks and trust companies throughout the country. Their average assets are $36.2 million. Average operating income? $1,621,000.

The Court: The column you are referring to sets forth the salaries as of January 1, 1964, of Nashville Bank and Trust Company?

[fol. 1648] The Witness: The column I am looking at, the president received $28,389.90.

The Court: That's the one.

The Witness: Here your comparable salary is $34,300.

The Court: What about the vice-president and assistant vice-presidents and secretary-treasurer?

How do they compare?

Mr. Weinbaum: Excuse me, Your Honor, is there a copy of that he is referring to?

The Witness: You can have this, if you would like.

Mr. Weinbaum: You have to use that now.

The Court: Go ahead with your answer.

The Witness: This is very difficult to jibe in here for the reason that these banks—or, let me put it another way.

The Nashville Bank and Trust Company seemed to

be missing quite a number of officers. For instance, they didn't have a top senior vice-president. They didn't have an operating vice-president. They didn't have an advertising executive. Their comptroller and auditor were under one and the same heading. They didn't have a senior personnel officer.

[fol. 1649] By Mr. Hooker:

Q. What you are saying——

Mr. Minicus: The witness is answering the objection.
Mr. Hooker: I am sorry. He is answering the objection?
Mr. Minicus: Yes.
The Court: Go ahead.
The Witness: The point is, if you take even the salaries here that are comparable with those of the Nashville Bank and Trust Company, the Nashville Bank and Trust Company salaries are low without taking into consideration the fact that they are very short of personnel.
I attempted to make a compilation of this. The Nashville Bank and Trust Company's administrative salaries totaled $97,600. If they were fully staffed, to the best of my ability to judge, they should have totaled $149,800. So, in other words, they were about fifty percent low.
The Court: If they were fully staffed, assuming the same salary scale that they used?
The Witness: No; the same salary scale as set forth——
The Court: In the national average?
[fol. 1650] The Witness: Yes.
The Court: How about this vice-president in charge of the banking department, a department head?
The Witness: Vice-president in charge of banking?
The Court: $11,697. How does that compare?
The Witness: Here, to the best of my ability, I should think he should be getting $24,000 rather than $11,700.
The Court: The mortgage department head?
The Witness: The mortgage department was not too far off. That was $10,600 against $12,000 in here.
The Court: And the auditor?
The Witness: The auditor, $7,100 against $12,500.
The Court: New business head?
The Witness: $10,800, as against $10,100 in here. Wheth-

er new business—part of it comes under some other function—I don't know.

Real estate seems to be exactly the same. They were all right in their real estate.

Mr. Weinbaum: Excuse me. Did you say $10,100 for the new business department, Mr. Howell?

The Witness: Yes.

Mr. Weinbaum: For the Nashville Bank and Trust [fols. 1651-1652] Company?

The Witness: Yes.

Mr. Weinbaum: I believe it is $10,788.

The Witness: That is called in here senior customer relations executive. Is it the same job? I don't know.

Mr. Weinbaum: I thought you had indicated that Nashville Trust Company was paying $10,100 for its new business——

The Witness: No; the Nashville Trust Company was paying $10,800, and here it is $10,100.

Mr. Weinbaum: Excuse me.

By Mr. Hooker:

Q. To the extent that you would have undertaken filling any of these jobs at these salaries, what would have been your prediction as to the ultimate success of your search?

A. I don't think we would have been successful in finding these men, no matter what the salaries were.

* * * * * * * *

[fol. 1653] By Mr. Hooker:

Q. How long were you with McKenzie and Co., Mr. Howell?

A. A little over three years.

Q. When you formed your own firm in 1952, how did you go about it at that time?

A. We would take anything we could get.

Q. How long did that last, Mr. Howell?

A. Well, to answer it another way, we put this $20,000 minimum salary in about three years ago.

Q. Why did you put that in, Mr. Howell? Was it because there was some inherent difference between a man who makes $21,000 and a man who makes $18,000?

A. No. The reason we put it in was it had to do with our fee structure. You make more money if you place higher-priced men, that's all. We found we were getting sufficient business in the higher bracket so that we could pass up the smaller assignments.

Q. As to the president's position, Mr. Howell, suppose you had been authorized to increase the salary shown as at 1-1-64 by fifty percent, would you have undertaken recruitment of a man capable of carrying the ultimate responsibility in the bank at the figure thus derived?

A. No, we wouldn't. Most men of the caliber required [fols. 1654-1656] for this position do not move for salary. Whether the salary was $28,000 or $35,000 really wouldn't make too much difference. To successfully fill this position, you would have to find a man who was not only a good banker and acceptable to the community, but who wanted to make a name for himself.

Frankly, I think it would be a lot easier for a man with these qualifications to make a name for himself somewhere else than to go into a bank that appeared to be running downhill as best I can judge it, and where there was a stupendous task of building up an entirely new organization.

* * * * * * *

[fol. 1657] By Mr. Hooker:

Q. State whether or not you think the bank at that point was running downhill, Mr. Howell, and in what sense, if you think it was running downhill, that you think it was.

A. I am looking at this entirely from the point of view of personnel. As far as I can see, by looking at these charts, there has been no provision for adequately bringing young men into this bank. Therefore one of the problems that would be faced by a new president would be to almost without exception find department heads. This would be his first big assignment.

This in itself is so difficult it makes the hurdle of finding a man almost insurmountable.

Mr. Hooker: If Your Honor please, I don't believe he specifically answered my question.

Would you read that question back to him please?

The Court: I think he did, didn't he? Go ahead.

Mr. Hooker: You think he did?

The Court: I thought he did.

Mr. Hooker: Strike the request to have the question read back.

By Mr. Hooker:

[fol. 1658] Q. Suppose you had undertaken the task, Mr. Howell, of filling the positions shown on this management chart about which we have been having questions and answers. What would you estimate the cost to the bank of having your firm fill these positions would have been?

A. Well, if we undertook the assignment of all the positions, the cost would be somewhere between $50,000 and $75,000. Let me explain something that I probably should have brought up before that will possibly answer other objections.

When we work for a company and they say—and most of our work is repeat year after year—"We mant a man at $18,000 a year," we can't say no to them. So the way we get around this is, we say, "As you know, we charge twenty-five percent of the first year's compensation, or $5,000, whichever is greater."

So if an old client comes in and says, "I have got to get a fellow at $18,000 or at $16,500," or something, we say, "All right, with this provision. We will do it, but we will charge you the same fee that we would charge for a $20,000 a year man."

Q. So in that respect you have had the experience recently of acquiring men under $20,000?

A. That's right.

Q. In your estimation what would have been the elapsed time involved in rebuilding this organization by filling the positions indicated?

[fols. 1659-1660] A. Several years.

Q. Mr. Howell, referring again to Exhibit 15, the management chart, what is your opinion as a professional recruiter about the ages shown for persons filling the positions about which I have not been asking you?

In other words, the positions other than president, other than vice-president in charge of the banking department, other ~~than vice~~-president in charge of the mortgage depart-

ment, other than vice-president in the new business department, and other than chairman of the board?

A. You are talking about the auditor-comptroller, the man that heads real estate, and the trust department. I would think the auditor-comptroller at 72, the real estate man at 66—both should be retired and new men found to take their place.

The trust department, it seems to me, is in the soundest position of any part of this bank. You have got one man, 59. You have got another at 48 at the top of the trust department. This is probably all right.

Q. As a professional recruiter, is there anybody on this chart that you would have recommended for the job of president of this bank?

* * * * * * *

[fol. 1661] A. The problem is obviously a very acute one. As I said, I would question whether you could get a man to act as chief executive officer; and if you couldn't do that, you couldn't get men underneath him to come in.

* * * * * * *

[fols. 1662-1668] Cross-Examination.

By Mr. Weinbaum:

* * * * * * *

[fols. 1669-1671] Q. You indicated, Mr. Howell, and this is the point we are trying to get at, that people owning a bank who know nothing at all about the banking business, if this were the case, you would have difficulty finding a president to come into such an environment.

A. That's right.

Q. But you do not know whether or not this was the case here?

A. No, but I do know that it is a case where you have ownership vested—where the ownership does not know the business, is not familiar with the business, that it is more difficult to find a man to go in and run the company, because he never knows what brakes are going to be ap-

plied on him, really, what his responsibilities are, and what his authority is.

Q. And this would be truer in a closely-held company, would it not?

A. Yes, it is particularly true in closely-held companies.

* * * * * * *

[fol. 1672] By Mr. Weinbaum:

Q. Moving along, Mr. Howell, we would like to clear up the point of whether or not you placed bankers in locations in cities different from where they originate.

A. Yes.

Q. Is there a good deal of mobility in the banking business with regard to personnel?

A. No.

Q. Less mobility than in other occupations?

A. That is correct.

Q. However, it is not uncommon for a banker to move from one city to another?

A. That is correct.

Q. And, in fact, you place people in other communities, do you not?

A. We have.

* * * * * * *

[fols. 1673-1675] Q. Mr. Howell, as a recruitment specialist, is it not a fact that salaries generally paid by larger companies are larger than those paid by a smaller company?

A. Very definitely.

Q. Would it be surprising to you that a bank approximately eight times larger than another institution would pay salaries substantially in excess of those paid by the smaller institution?

A. It would not be surprising to me, no.

* * * * * * *

[fol. 1676] Q. Did you say that the salaries and executive ability of the bank were below——

A. No; the salaries and the number of executives.

Q. Was below what you consider to be adequate?

A. Yes.

Q. You were asked whether it would be important for a bank to have a funded pension plan in order to attract adequate personnel.

A. It would.

Q. Were you aware of the fact that the Nashville Bank and Trust Company had a pension plan?

A. Yes.

Q. Can you describe the difference between a funded pension plan and a pension plan as it affects what the employees of the trust company had been receiving in the form of pensions?

[fol. 1677] A. I think we are splitting hairs here a little bit. What I am trying to say is that to attract a man you must offer him in the way of pension plan, fringe benefits, or anything else there may be, whatever he is now receiving.

To give you a specific case, three or four years ago John Swearingen, who is the president of Standard Oil of Indiana, asked us to find a vice-president of finance for his company. After quite a lengthy search we came up with a fellow whose name was Chester May.

Chester May at that time was the treasurer of the American Telephone and Telegraph Company, and had served that company ever since his graduation from college thirty years before.

The American Telephone and Telegraph Company has a tremendous package for each one of its individuals. This wasn't a question of salary. I think the salary he received from Indiana was approximately the same he got from A. T. and T.

He moved for the opportunity. But our problem was that we had to work out a package. We had lawyers; we had accountants, and everybody else, working on a package that would equal his fringe benefits so his fringe benefits at Indiana would equal those of the Telephone Company without being prohibitive in cost to Indiana.

This applies in every research we make. You have got [fol. 1678] to have the same benefits, whether it be a funded pension plan or whatever it may be.

Q. You testified in regard to this chart, Mr. Howell, and

I would like to go into that a little bit further with you——

Mr. Weinbaum: Do you have a copy that Mr. Howell can refer to? Do you have a copy up there, Mr. Howell? I would like to hand the witness this chart.

By Mr. Weinbaum:

Q. You have indicated that this array of personnel in each department was greatly inadequate; is that correct, with the exception of the trust department?

A. Let me rephrase that. It was inadequate from the point of view of age and hence future potential service.

Q. Could we turn to the banking department for a moment and could you tell us, looking strictly at this from the age point of view, in what manner that particular department was deficient?

A. Mr. Young was at retirement age. Mr. Aldred had presumably six years to go. Mr. Mathis was a right age. Mr. Noel, three years to go. And the others at the right age.

However, if you are going to look at the ages, I think you also ought to look at the salary.

Q. We will get to that in a second, sir. I am talking [fol. 1679] strictly about the ages. In terms of distribution according to ages and succession, I would like to know in what manner you would have improved this situation.

First of all, in your opinion—and I know you are not a bank specialist—for a bank this size do there appear to be a sufficient number of people in that department?

A. Yes, as far as I can tell.

Q. Assuming that Mr. Young would be retiring, does the distribution in age appear to provide people of such maturity to move up in succession?

A. Yes.

Q. Would you say the same for the trust department as far as age?

A. Yes, correct.

Q. The mortgage department, Mr. Howell: Do you have any idea of the scope of the mortgage department and its activities?

A. I do not.

Q. I think it is obvious, and I am sure you would agree, that Mr. Thomas was elderly?

A. Yes.

Q. Do you have an opinion as to whether in terms of age Mr. Williams would have been able to succeed Mr. Thomas?

A. I would think so.

Q. Looking at the auditor-comptroller department. [fol. 1680] A. I would agree with you again.

Q. And the new business department.

A. Again I agree.

Q. So, as far as immediate needs for the trust department for the Trust Company, assuming all of these department heads across the board who were of retirement age had quit the next day, there were people age-wise who would have been able to move into these positions, were there not?

A. Correct.

Q. You have testified you have not met these people; you know nothing about their professional competence.

A. I can judge a little by their salaries.

Q. You indicate that you can tell by looking at a man's salary whether he is professionally competent or not?

A. I can get a pretty darned good idea, yes.

Q. And that would apply to the president of this bank as well as to all the other officers; is that correct?

A. Yes.

Q. So that if the president of the bank was receiving a substantially less sum of money than the president of one of the other banks in town, you would——

Mr. Hooker: I object, if Your Honor please. The record shows that he had a substantial stock option when he went to that bank, and I think that Mr. Weinbaum is laying an [fol. 1681] improper predicate if he ask him about something and doesn't tell him that.

A. I was going to bring out another point. Where you get a family company, for instance, and the president is making a small salary, but he has some other inducements —he is a very large stockholder or something of the sort —then obviously you can't weigh one executive salary against another.

My point is this: The New York City banks, granted they pay more than a bank outside of New York City, are paying people to join them—these are untrained people, just graduated from college and who do not know one thing about banking—$7200 a year.

Therefore, without disrespect to Mr. Mathis or Mr. Noel or Mr. Puckett or these other people in here, they cannot be regarded as highly competent bankers from that point of view. Therefore I don't know whether they are capable.

You can't do this on age alone. Therefore I don't know whether they are capable of running these departments or not, but I wouldn't think so.

By Mr. Weinbaum:

Q. Mr. Howell, can you compare what an officer's responsibilities and duties are in New York with what they are down here? Do you know what Mr. Thomas or what Mr. Duke or any of these people were doing?

A. I do not. But I don't think there is more than, [fol. 1682] let us say, a fifty percent differential in salary —if that much—between here and New York. And even judged by that, these fellows—I question their competence to run these various departments.

Q. You would question Mr. Parker's competence to run the trust department?

Mr. Hooker: Objection, if Your Honor please. Mr. Parker is running the trust department. He is now talking about the people he is talking about elevating in case of the retirement of those people.

The Court: Yes, you are talking about the ones to succeed the heads of the departments.

By Mr. Weinbaum:

Q. Let's talk about Mr. Aldred in the banking department. You can tell by looking at Mr. Aldred's salary that there is a good probability he was not competent to assume the head of the banking department?

A. Let me answer your question another way. Let us assume that we were asked to find a head of a banking

department for another bank—let us say in Chattanooga; and if they were willing to pay $20,000 a year——

Mr. Minicus: Objection. There is no foundation that any bank in Chattanooga is willing to pay any $20,000 a year. He should have a foundation in the record for that.

[fol. 1683] The Court: This is just an example he is using.

Mr. Hooker: We object to having more than one lawyer examine the witness at a time.

Mr. Minicus: I am objecting to the statement, and it should be stricken. There is no foundation for it at all. I doubt very much whether these people in Chattanooga are making $20,000. If he wants to take a hypothetical state, that is all right with me; but not bring it so close to home.

The Court: He is using a hypothetical situation. Go ahead.

The Witness: Let me phrase this another way. I would question whether another bank would be interested in the services of a man to run their banking department if that man had been with this bank X year and was only making ten thousand dollars a year.

By Mr. Weinbaum:

Q. But that really isn't the question, Mr. Howell. The question is whether he is qualified to come in and run the banking department of this particular bank. All we would like to establish, Mr. Howell, is whether or not, based on the ages which you had testified to earlier, these various people would appear to have the qualifications to move up and run these departments.

[fol. 1684] A. Based on age only.

Q. I would like to talk about salaries just a little bit. Are you familiar generally with how salaries in the southern part of the country would compare to salaries in the nation as a whole?

A. I know they are lower. No, I don't know how much lower; twenty-five percent or something of the sort. Again, it depends on the size of the institution. I was in Lexington last week end, and IBM is coming there with a new plant, as you probably know.

They are paying wages that are going to raise the entire level for the community, probably.

Q. Could you indicate, Mr. Howell, whether bank salaries generally in your experience are below the averages paid in other industries?

A. I don't think they are any more. They were ten years ago, but they have been moving up. They have had to move up.

Q. And today it is your view that bank salaries are generally competitive with those of all other industries?

A. You can't make such a generalization. A fellow that is very capable at selling cosmetics may get $75,000 a year, while another man who is president of a small electronics company may get $25,000 a year.

The electronics fellow may have three times the brains [fol. 1685] and ability and everything else. So you can't compare industry salaries.

Q. I would like to turn your attention to the salary chart, Mr. Howell, which you testified on a short time ago, Defendant's Exhibit 44. Do you have a copy of that?

A. Yes, I think I do.

[fol. 1686] Q. Mr. Howell, were you aware of the fact that as of January 15, 1964, the salaries of every employee of Nashville Bank and Trust Company were raised by five per cent?

A. No, I didn't know that.

Q. Would you comment on whether you believe the salaries which Third National Bank was paying all of these employees as of April 1, 1966, were adequate?

A. I don't know what they were paying them. I have 44 here, but this is—oh, I beg your pardon.

I don't think I can answer that question, but I think it indicates one thing, that the salaries being paid as of 1-1-64 were not sufficient.

Q. You base that on the fact that the salaries were raised?

A. I don't think the Third National Bank made these raises if they didn't have to.

Q. Do you think these salaries are adequate? You looked at the others and said the others were inadequate.

Mr. Farris: We object, if Your Honor please, because of thirty-seven per cent to go along with those salaries, and

this question is not giving the witness a proper opportunity to testify with respect to the facts that are already on record in this case.

[fol. 1687] Mr. Weinbaum: Your Honor, we are talking about salaries. He was looking at salaries of the Trust Company and saying they were inadequate, and I'm asking him if the salaries here are——

The Court: Just as such?

Mr. Weinbaum: Excuse me?

The Court: As such, salaries as such?

Mr. Weinbaum: Yes, sir.

The Court: All right, let him answer.

By Mr. Weinbaum:

Q. Are these salaries deemed to you to be adequate?

A. I cannot answer that categorically, but let us take that under the banking department——

Q. Excuse me, Mr. Howell, you did indicate that the salaries of the Nashville Bank and Trust Company were inadequate. Now why can't you indicate categorically whether these are adequate?

A. Because for one thing, I don't know where these men fit into the new banking picture.

Q. Did you know where they fitted into the old banking picture?

A. Well, we had a pretty good idea here on this chart. Now were the duties all the same?

Q. If I told you that substantially all of these em- [fol. 1688] ployees are working out of the old main office of the Trust Company——

Mr. Hooker: Which is now a branch.

By Mr. Weinbaum:

Q. Would that make any difference to you in your determination of the adequacy or inadequacy of the salaries?

A. I think that the proof of my earlier remark namely that the salaries were inadequate, lies here in the fact that they were all raised.

Now I cannot say whether these are adequate or not.

Q. You spoke about lack of branches, automation, credit

department and several other things, being a handicap in hiring a bank president.

A. Yes.

Q. And other persons.

A. Yes.

Q. Do you know to what extent the Nashville Bank and Trust Company was handicapped in Nashville by not having these particular items?

A. No, I do not.

Q. So you do not know to what extent a president would be handicapped in running a bank that didn't have these items, is that correct?

A. That is correct.

[fol. 1689] Q. You are aware of the fact, are you not, Mr. Howell, that the depletion at the Trust Company upon which Mr. Hooker questioned you, did not occur all at one time?

A. Did not what all at one time?

Q. Did not occur all at one time?

A. Yes.

Q. And that with regard to certain depletions, they occurred over a year or more subsequent to the date of that chart?

A. Yes.

Q. Mr. Howell, just a couple of more brief questions. Are you familiar with the pay scale of banks in Tennessee?

A. No.

Q. Are you familiar with the pay scale of banks in Nashville?

A. No.

Mr. Weinbaum: We have no further questions, Your Honor.

Redirect examination.

By Mr. Hooker:

Q. Mr. Howell, I'll ask you to identify these documents and say what they are.

A. These pages are taken from the American Manage- [fol. 1690] ment Association Executive Compensation Service, published every year. This edition came out in November, 1965. It concerns the positions and salaries of banks

and trust companies in four categories—total assets under $25,000,000; total assets, $25,000,000 to $50,000,000; total assets $50,000,000 to $100,000,000; and total assets $100,000,000 to $200,000,000.

Q. And which of those categories did you use to compare with the Nashville Bank and Trust Company?

A. I used the asset group in the $25,000,000 to $50,000,000 bracket.

Mr. Hooker: Now if Your Honor please, I'll get these copies and marked before I move them into evidence, because these are the only copies they have.

The Court: Well, let him mark them, and then you can withdraw them.

Mr. Hooker: Yes, sir.

The Court: What exhibit is it?

Mr. Hooker: Forty-seven.

I move that they be admitted as Defendant's Exhibit 47, if Your Honor please.

The Court: All right, there appears to be no objection, let it be allowed.

(Defendant's Exhibit No. 47 was received into evidence.)

[fol. 1691] By Mr. Hooker:

Q. Mr. Howell, state whether or not you would have undertaken to recruit the vacant positions on this management chart.

A. I would not.

Q. Why not?

A. I don't think I could fill the positions.

* * * * * * *

[fol. 1692] Thomas Howe Sloan, a witness called to testify by and in behalf of the defendant banks, after having first been duly sworn, was examined, and testified as follows:

Direct examination.

By Mr. Hooker:

Q. Mr. Sloan, will you speak up, please, sir, so everybody can hear.

What is your address, sir?

A. My home address is 2059 Sharondale in Atlanta, Georgia. This is at the present rented out. I'm going to be in the Guard for the next six months, the National Guard, but my own home is in Atlanta, Georgia.

Q. What is your occupation?

A. Banking is my occupation. As I say, I'm going into the Guard, but I've got a leave of absence, and my past occupation is banking.

Q. Where do you practice that occupation?

A. Trust Company of Georgia in Atlanta.

Q. What other banks—what other bank, if any, have you ever worked for?

A. I worked for the Nashville Bank and Trust Company for a short period, one summer, in between semesters in school.

Q. What were the circumstances of that employment?

A. Well, of course, I was on a temporary basis [fol. 1693] there, and I had a personal friend at the bank, Fred Weber, and he had offered to assist me in getting a job for this short period of time.

Q. How did you determine to go with the bank in Atlanta?

A. Well, at Vanderbilt, they—the Trust Company of Georgia sent their personnel—one of their personnel Department men up to interview seniors at which time I interviewed the gentleman they sent up, and later was offered a job with them.

In connection with that, I was also offered a job with Nashville Bank and Trust.

Q. What were the inducements that affected your decision to go to Atlanta?

A. Well, there were—of course anybody in that state, two things they are really looking for, in my opinion. One

is opportunity and the other is money, and they were both far superior in Atlanta at the Trust Company of Georgia.

Q. Now in addition to the Trust Company of Georgia what other bank did you say made available employment to you, permanent employment at that time?

A. Nashville Bank and Trust Company here.

Q. How did you determine that you would not go to work for that bank?

A. Well, in my interview with Nashville Bank and [fol. 1694] Trust, I don't remember verbatim, but I was told that the opportunity was far better at the other place I had been offered a job.

* * * * * * *

[fol. 1695] By Mr. Hooker:

Q. And from whom did you get that advice?

A. Mr. Hackworth told me this.

Q. Mr. W. S. Hackworth?

A. Right, sir.

Q. President of the Nashville Bank and Trust?

A. Right, sir.

Q. What bank in Nashville are other members of your family connected with?

A. My brother is with the First American, and my father is also on the Board of Directors there.

[fol. 1696] Q. On the Board of what?

A. He's a member of the Board of Directors.

Q. Of what bank?

A. First American.

Q. What is your father's regular occupation?

A. He's Chairman of Cain-Sloan Company.

Q. Chairman of the Board?

A. Chairman of the Board.

Q. And president of Cain-Sloan Company?

A. Right.

Q. And he's on the Board of the First American National Bank?

A. That's right.

Q. If your father was on the Board of Directors of the First American National Bank and your brother was em-

ployed there, why were you willing to consider going to work for the Nashville Bank and Trust Company?

A. Well, the Nashville Bank and Trust Company had always been installed in my mind that it was sort of an interrelationship between those two banks. The way I always felt was sort of a big brother relationship, First American was sort of a big brother to Nashville Bank and Trust.

Q. State whether or not you would have considered going to work for either of the other two large banks in Nashville other than the First American in view of your [fols. 1697-1761] family's relationship to the First American?

A. Well, of course when I was going through my mind to look for a job, I wanted to go to work for a bank. Naturally all of the banks in my home town entered my mind, but the only one I wanted to talk to and would have gone to work with would have been Nashville Bank and Trust Company.

Q. Why was that?

A. Because of this relationship with First American and of course First American I could not go to work with my brother working there.

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[fols. 1762-1764] Howard D. Crosse, a witness called to testify by and in behalf of the defendant banks, after having first been duly sworn, was examined, and testified as follows:

Direct examination.

By Mr. Knight:

Q. What is your present occupation, Mr. Crosse?

A. At the present time, I am vice-chairman of the Board of the Franklin National Bank, which has its legal head office in Mineola, New York, but it is represented in Nassau,

Suffolk County, and New York City itself with major offices.

* * * * * * *

[fol. 1765] Q. Could you describe somewhat more specifically what your duties were as a banker?

A. As a banker, I either participated in or directed the examination of a bank. We would—if it was a small bank—prove the assets and liabilities. We would appraise the loans and investments. We examine into the policies of the bank and the key focus of any bank examination is to come up with an evaluation of the management and its effectiveness in keeping the bank out of difficulty and moving forward to serve the needs of the community.

Q. Have you had any experience as a bank examiner in connection with bank mergers?

A. Not as a bank examiner, but as an officer of the bank examinations department as vice-president of the department, I was responsible for the preparation of what we called "presenting memoranda". These were the official recommendations of the Federal Reserve Bank of New [fol. 1766] York to Board of Governors of the Federal Reserve System concerning every merger and holding company application and every branch application as well as the reports under the old merger law on competitive factors in mergers involving national banks and non-member banks.

These memoranda and recommendations were prepared under my direction and as vice-president, I signed these reports and was solely responsible for presenting them as an officer of the Board of Governors.

[fol. 1767] Q. Have you published any writings that you think might be relevant to your testimony in this case?

A. Yes, I am the author of a book called, "Management Policies for Commercial Banks," published by Prentice-Hall, of which over six thousand copies have been sold, which is widely used as a textbook in graduate schools of banking and by bank management as a training medium.

I have also written numerous articles and made speeches hither and yon, including one on "Banking Structure and Competition," which I presented before the American Fi-

nance Association meetings in Chicago a year ago Christmas. This was subsequently published in the Journal of Finance, which is the organ of that Association.

Q. I am asking at the outset, Mr. Crosse, whether you have any opinion that there is one factor in the makeup of a bank that is more important than any other factor in assessing the competitive effectiveness of the bank?

A. The gist of my talk to the members of the American Finance Association in Chicago a year ago was just to that point. Economists are forever trying to relate what happens in banking to a number of variables—to the size of the bank, to the lending limits, to the structure, whether it is a branch bank or not.

The point I tried to make was that, out of my experience as a bank supervisor, I felt that the most important [fol. 1768] variable in what happens in banking is the character and caliber and ability of its management. That if a small bank has very good management, it will grow to be a big bank. If a branch bank has poor management, it will not serve the community as well as a unit bank that is very well managed.

I could cite numerous examples. I cited some of them in that talk. A bank in Suffolk County, which is a suburban county in New York, ten years ago was a $6 million bank going nowhere. Control of this bank was acquired by a very energetic and able businessman, and without a single merger that bank has grown in ten years to be over $60 million.

It is surrounded by other small banks which had the equal opportunity in a growing community, but without management had only slow growth, reflecting nothing more than the normal growth of the community.

Management, therefore, I think is the key factor to the success of a bank, whatever the structure may be.

Q. You mentioned an example, Mr. Crosse, of a small bank which had done well with good management. I would like to ask your opinion as to whether the competitive challenge to small banks has in your opinion changed over, say, the last twenty or twenty-five years.

A. Very much so. The point that I would make is that the pressures for changes in banking structure come from economic changes in the community itself. Economic growth

[fol. 1769] in the community brings about pressure for changing in banking.

Obviously when new people and new businesses move into an area, when homes are being built and business is growing and developing, the demands for banking services increase proportionately. They increase not only in volume, but in complexity.

This is what I have seen happen in banking over the past twenty years. The complexity of the requests for credit have posed problems for management that has not been willing or able to change to meet the needs of a growing community.

I could cite numerous instances, but this certainly is a generalization which I feel is very true, that economic change requires a change in banking; and it takes progressive, imaginative management to change with the community and to serve its needs which are of increasing complexity.

Q. I take it from your answer that you would say it is more true today than it was twenty-five years ago?

A. Yes. Many people point out that change is taking place at a progressively higher rate all the time. This is certainly true in banking.

Q. What factors would you look to in analyzing the effectiveness of a bank's management?

A. You can break this question down two ways. You find certain personal factors in the top management of a [fol. 1770] well-run bank, and they aren't necessarily the same. The people aren't necessarily alike. Industrial psychologists have long been puzzled and have tried to find some young people with the characteristics that would make them the leaders of tomorrow.

But this quality of leadership is pretty intangible; but it is there in the people that are leaders.

They are imaginative; they are what my boss calls idea men; they are always thinking ahead trying to meet the changing needs of the community.

Aside from the personal qualifications of leadership, which are very important, there are certain scientific management approaches which you can read about in any management textbook, and these men tend to follow them. They tend to be organization men, to delegate authority, to

train young people, to maintain excellent communications throughout the bank.

They tend to be people who have written policies for loans and investments, who have good operating manuals, good job evaluation plans. These go along. They are following modern management methods.

Therefore, they are the men to lead, but unfortunately every bank does not have them.

Q. Therefore you say the effectiveness of a bank's management basically requires objective analysis. On the other [fol. 1771] hand——

A. It is reflected in the policies and practices which the bank will be following.

Q. Would the salary scale of the management personnel have any relevance to this analysis?

A. I think it very definitely has, because it has been my experience that over a period of time, if an organization is not paying competitive salaries in the market, it tends to lose the best of its people, the people who are most impatient to get ahead and to be successful, the men who have imagination and drive; and it tends to keep those who are more timid, who are afraid to make changes, who may be a little bit more mediocre.

In our bank examinations in the Federal Reserve Bank in New York we had over 125 examiners, assistant examiners and trainees on our staff. With this kind of a staff, and with the demand for bank officers that has existed for the last ten years, we had a considerable amount of turnover.

It would run ten to twelve percent per annum. These were young men whom we had trained as bank examiners, who went out and took jobs usually at considerably higher salaries in commercial banks because they were looking to get ahead faster than they could in the quasi-government agency examining banks.

It was also the brightest and most able that we [fol. 1772] lost. It is also the slightly duller that we kept. There are always exceptions, but this is a fair generalization.

The people who lack the courage of their convictions stayed in the sheltered life of a government agency. The ones who would be outstanding management were lured away by higher salaries.

Q. Mr. Crosse, you have studied the management chart of Nashville Bank and Trust Company which has been introduced as Defendants' Exhibit 15 in this case. I will ask you at this time just to make any comments on the data reflected on that chart that seems relevant to you.

A. The most amazing thing about this chart is the salary scales. The highest vice-president of this bank in charge of its trust department was getting $13,194. Just last week we reviewed the salary of a 29-year old assistant cashier of Franklin National Bank, a young man who has been with us six months and previously was a junior officer at a New York City bank, and before that had worked for me as trainee in the Federal—one of these bright ones that left for better opportunities.

He came with us at Franklin at $13,000 a year. Last week we authorized his increase—a 29-year old assistant cashier —to $15,000.

We couldn't keep people like this unless we paid these comparable prices down the line.

[fol. 1773] A week ago we promoted to vice-president in our national division a young man of 34, very able, very bright. He is the youngest and the lowest-paid vice-president in our bank. His salary starts at $17,000.

Comparable people in the Nashville Bank and Trust Company appear to have been getting about one-third as much. I admit that I am not familiar with salary scales in Nashville. I have not seen salaries like this in banks that I examined, even in what we call Upstate New York. I know that salaries in Chicago are even higher than in New York.

There is always an opportunity for people who want to get ahead to go from one city to another. They do it all the time. I am surprised that a bank—I would be surprised if a bank with a salary scale like this could over time really keep many bright, alert and able young men.

Another thing that struck me about this organizational chart is that there are a number of department heads who were at or above what we consider normal retirement age in banking—age 65. One of the things that has made a banking career somewhat less attractive to young men in the past has been that they so often had to wait for someone to die before they could get promoted.

Forced retirement at 65 has tended to modify this a little bit. You don't have to wait until the man died; you only have to wait until your boss gets to be 65. I waited [fol. 1774] ten years myself for this to happen. I certainly would have been discouraged if I didn't know how long I would have to wait before I became the vice-president of the Federal Reserve Bank of New York.

It seems to me unless you move the older people out, the younger people are going to become discouraged and the good ones again are going to leave.

Q. You note that Mr. Hackworth, the president of the bank, was 68 years of age at the time that chart was prepared. Assume that the new ownership of the bank, the ownership that took over in the first part of 1964, had attempted to replace Mr. Hackworth from outside the bank. Do you have any opinion as to the difficulty or the ease of doing this?

A. It is very difficult to bring someone in from the outside in a bank of even small size—let alone $60 million, which I believe this bank was, more or less. It is not impossible, but it is hard to find a topnotch capable person who is willing to undertake the hard job of revitalizing a bank.

I am reminded of a very similar instance with which I am very familiar. This is a bank about $60 or $70 million in total resources in suburban New Jersey. I examined that bank years ago as an examiner. I knew its management and its management problems well.

[fol. 1775] It went through this process about twenty years ago and brought in from the outside a president who was fundamentally an investment man. He ran the bank's investment portfolio and trust department well, but the rest of the bank never grew with the community it served. Its consumer credit department was weak; it made very few commercial loans because the president didn't know this business.

The directors of the bank were all successful businessmen, including two bankers, and they knew that there was something wrong with the bank. They had no losses. There was no trouble, no problem; but the bank was not making the progress that it should have been making.

I used this bank as a case history, disguising the figures,

for a problem of the stagnant bank which I gave to my students at Stoneman Graduate School. The directors of the bank—the president was nearing retirement age—had no succession from within.

As I said before, the development of successor management is one of the key indices of competent management. This man had developed no successor, and so they set about to find successor management. They spent three years to my knowledge looking. They engaged a management search firm at some considerable cost, who finally found a man that they considered acceptable from the Midwest. He [fols. 1776-1808] had been a banker and an industrialist. He seemed to have all of the qualifications for modern management training that were just the thing this bank needed to revitalize it. He became executive vice-president of the bank, and he proceeded to do the job that he was hired to do.

He stepped on so many toes and got so many of the old-line employees unhappy they went behind his back and complained to the board of directors about what a tyrant he was, how bad he was for morale, and within a year and a half this man who had taken so long to find was let out. He was told he would never be president of the bank.

He couldn't apply his knowledge and ability in a situation in which old habits had become so ingrained. The job of changing a whole organization of this size is a tremendous one, and it takes more courage than most people have to tackle it.

* * * * * * *

[fol. 1809] Cross-Examination.

By Mr. Weinbaum:

Q. You have indicated in your book, Mr. Crosse, that there is a great deal of evidence that the well-managed small or medium-sized bank can still operate successfully and can still find successor management and ownership if it tries.

I wonder if you could explain to us what you mean by the remark that a bank can find successor management if it tries?

A. Nothing is impossible in this world. And in writing a book for banking students, and bankers generally, you certainly cannot take the position that it is impossible to salvage small banks, however great their difficulties may be.

I sincerely believe, and I have seen some evidence of banks which were pretty moribund being taken over, particularly banks small enough to be acquired by one individual—I had lunch two weeks ago with a man who has built up a little bank in Beverly Hills, California, into a thirty million-dollar bank in four years. He bought control of it. He was in the mortgage banking business, and it is really the tail of the banking business, but he is a banking genius. He is one of the dynamic individuals who won't stop at anything. He can do it with a small, moribund bank. Is isn't impossible, it doesn't happen very often.

Q. You have also indicated that many men have come in from other fields to out perform many men who have spent all of their lives in banking. Do you agree with that [fols. 1810-1818] proposition?

A. Some of the most amazing jobs done with small banks, or new banks particularly, have been done by lawyers, mortgage bankers, engineers, business men. This is true.

Q. And you have also indicated that banking is a mobile profession in that people will accept jobs in other communities, is that not so?

A. They, to my knowledge, frequently do.

* * * * * * *

[fol. 1819] Q. In connection with direct and indirect lending practices of a bank you have indicated that banks that practice direct lending are relying substantially on their own customers. I would ask to what extent the fact that a bank aggressively advertised direct financing through the community at large would have on the derivation of direct financing customers.

A. A bank engaged in direct lending which advertised extensively in the community would increase the number of its customers. This has been the history. It would not increase it phenomenally.

I have been told by banks which do nothing but direct lending—and there are some major banks who feel that this is the most profitable kind of lending——

Q. It isn't just the small banks who do the direct lending?

A. It isn't just the small banks. Banks which engage [fol. 1820] in direct lending tell me that after a year or two of being in this business, eighty percent of their loan applications are repeat applications and they are able to pass on the credits very quickly, since they have had experience with the same customers in the past.

They find this an economical way of lending, even though it doesn't bring them as great a volume as would dealer financing.

Q. And greater volume isn't as important in direct lending, is it, to the extent that you earn more net on a comparable volume using the two methods?

A. I must confess that I have never been convinced by arguments on either side that one form of lending is more profitable than the other. I could bring you very competent bankers who would argue both sides of that case to a standstill as far as I am concerned.

Q. You have reached an opinion on this, haven't you?

A. I have no strong personal feeling about whether one is more profitable than the other, because in the direct lending field the rates charged are generally lower and the costs are lower. I think you come out about even.

Q. You would earn more net on comparable volume, would you not, through the direct methods of financing?

A. I doubt it. I think they come out about the same. You have higher income and higher costs on the indirect, [fol. 1821] and you have lower income and lower costs—unless you are in a noncompetitive market and you can charge six percent discount on direct loans, as many small country banks do. Then there is no question but what direct lending is very much more profitable, because it is not competitive.

In one very highly competitive situation where three banks in the community all engage only in direct lending, they have computed the rates down to three and three-quarters percent on new automobile loans. They can't be making much money at that rate.

Q. You have indicated in your book, have you not, that a bank earns more net on comparable volume when it does direct financing?

A. I wrote that before the competition for direct lending became as intensive as it has since become.

Q. I see; thank you. You have indicated that people would prefer to go to their dealers to have their automobiles financed rather than go directly to a bank.

A. Some people.

Q. Can you state whether or not a lower interest rate provided by a bank doing direct financing would influence a substantial number of persons to deal directly with a bank?

A. A lower interest rate advertised by banks—and banks that do direct lending do advertise their lower rates very plainly—will influence thoughtful people who can add one [fol. 1822] and one and get two and figure out the difference in rates to take the extra trouble of going to a bank and arranging the loan.

My experience has been—and I am not going to derogate the American public—that the majority of people don't even ask what they are being charged. They ask what their monthly payments on their car will be, and that's where it ends.

They do not equip themselves to make the comparison which might lead them to go to the bank. Only the thoughtful person does. Your guess as to what percentage of our populace is thoughtful is as good as mine.

Q. Regarding common customers, Mr. Crosse, would it be your testimony that common customers is not an indication of competition between two banking institutions?

A. That is the trust of my belief and conviction. I lived for ten years in a community which is adjacent to the one in which I now live. The bank in that community, which was next door to me and very convenient, held the mortgage on my home, and it made me loans on securities from time to time; and I kept a demand deposit account with that bank.

I moved eight years ago to a community one mile away. It became inconvenient to go a mile and a half by car in five minutes to my old bank where all my relationships were, and I had not lived in the new community more than

[fol. 1823] six months when people said, "Well, we can't cash your checks unless they are on the local bank." So I opened a small checking account in the branch of the local bank. I now have two accounts and have had them for eight years.

The second account was opened because my bank in the other community was not providing a service, conveniences, the ability to cash checks conveniently, in my new community.

The fact that I opened two accounts proved to me that the two banks were not providing identical services or I would only have one bank account.

I think I am typical of most suburban commuters who have accounts in the suburbs and in New York City.

Q. In regard to large corporate customers, would your judgment be that the same considerations would apply, that two banks with a common large corporate customer would still not be competing with one another for the patronage of these customers?

A. No, I think that in the case of large corporations, they consider it the course of prudence and wisdom to maintain relationships with more than one bank, particularly if their credit needs are large and continuous.

For one thing, let us talk merely about finance companies. Finance companies are constant borrowers from banks. These are large prime-rate loans, loans which any bank is glad to have.

[fol. 1824] A finance company will ordinarily arrange lines of credit with a dozen or more banks across the country. One of the reasons is to have credit available from many sources when they need it. The second is that each bank expects the finance company to pay off its loan for a period of a year, and the finance company needs another place to go, cleans up in one bank and borrows in another. This is another reason for many accounts.

Corporations which are growing very rapidly sometimes find that their credit needs have outgrown the availabilities or the accessibility of credit from the bank where they have always done business, and they go to another bank to supplement their credit needs.

Q. A company might go to two or more banks to get sizeable loans; is that correct?

A. I think another example of what I have in mind——

Q. Are you answering this question?

A. I am answering your question.

Q. Thank you.

A. In the correspondent banking field, there are very few banks in the Second Federal Reserve District that have only one correspondent banking account. Every bank in New York City, every correspondent bank in New York, claims that it can render any correspondent service that a [fols. 1825-1832] bank would want. But, when you talk to a banker and say, "Why do you have accounts in four New York City banks?" you will find that there is a different reason and a fairly logical reason in the mind of the banker why he gets one service better from Manufacturers Hanover Trust Company and another service from the Olin Trust Company, and maybe another service better from the Franklin National Bank.

This from one point of view is a measure of competition. It is because these banks are in competition with each other and one is providing one service a little better, and the other is providing the other service a little better that people keep multiple accounts to take fullest advantage of the best service in each bank.

I consider this evidence of competitiveness. If the services were all the same and the prices were all the same, why would I have my money tied up in five banks instead of more money in one bank?

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[fol. 1833] SIDNEY EDWARD COHN, a witness called to testify by and in behalf of the Intervenor Defendant, after having first been duly sworn, was examined, and testified as follows:

Direct Examination.

By Mr. McEnerney:

* * * * * * *

Q. And what is your present occupation and title?

A. I am Chairman of the Board and chief executive officer of the Acme Boot Company, Incorporated.

Q. And where is the head office of Acme Boot Company located?

A. In Clarksville, Tennessee.

[fol. 1834] Q. And could you tell the Court what your company manufactures?

A. We manufacture leather boots, exclusively.

Q. And how many employees work at your main plant?

A. Our total employment now is around twenty-nine hundred of which I would judge between a thousand and eleven hundred are employed in Clarksville.

* * * * * * *

Q. Now in each of these five towns, where your company has plants, can you tell us which company is the largest manufacturer in those towns?

[fol. 1835] A. Well, to my knowledge, we are the largest employers in any of the five towns.

Q. Can you tell us about how many miles and in what direction from Nashville each of these five towns are? You can just approximate them.

A. Yes, sir. Well, Clarksville is between forty and forty-five miles from Nashville; Waverly is about fifty miles; Cookeville is the furthest, that's about eighty miles; Ashland City is about twelve or fifteen miles; and Springfield is roughly twenty miles from Nashville.

* * * * * * *

[fol. 1836] Q. Does your company borrow money in the operation of its business?

A. Yes, sir.

Q. For how many years has it done so?

A. Since the day the company was formed.

* * * * * * *

[fol. 1837] Q. And could you describe very briefly for us the borrowing history of your company and indicate whether or not your company's borrowing needs have increased?

A. Originally we banked in Clarksville at one bank there. We had a line of credit at the time which was the maximum the bank could give us of forty thousand dollars. We continued with that line of credit, and one of the three of us—one of the other two in the business had some money, and he loaned the company money during the peak seasons to sort of carry them over.

Well, we knew that we could never grow with that type of banking connection, so I came over and discussed the situation with a bank other than the Third National here and we opened a line of credit there of a hundred thousand dollars.

Q. When would that have been approximately?

A. I would judge it to be about 1935, somewhere around there.

Q. Go ahead.

A. Then from the hundred thousand, shortly thereafter, I knew that the bank we were dealing with was not one that we felt we could grow with, so I walked over to the Third National Bank and discussed it with the then late [fol. 1838] Mr. Frank Farris was living, I discussed the situation with him, and he asked me what line of credit we felt we would need, and I told him for the present a hundred thousand dollars would cover your requirements, but that I was looking toward the future.

Well, as time went on, we had to make larger—as the company grew, we had to make larger and larger loans, of course. In fact at the Third National were larger than the Third National was able to handle because of their capitalization at that time, and they in turn would—I don't know what bankers call it, but they would farm

out some of my loans, because, according to their capitalization, they couldn't handle any more than that amount.

Q. Could you give us an idea of the period of time now that you are speaking of?

A. No, sir. I couldn't tell you just what time, but I do recall, on several occasions discussing it with the bank. We have always made it a practice of going into the bank about a month before the end of your year and lining up your line of credit for the following year, and knowing the situation and knowing the fact they were limited, and I discusssed with them, and I told them definitely I did not want to deal with more than one bank.

Q. Can you tell us why you would have said that?

A. Yes, sir. We could have borrowed money at that [fol. 1839] time, as our line of credit became larger, we could have borrowed from one of the large eastern banks or northern banks, but after all, a bank is affected by the community in which it is located. It's going to back its own people, which is only natural and good common business sense.

We could have gotten money at those times, I suppose, for a fraction of a per cent cheaper by going away, but if economic conditions had gotten a little sour, we had a little rainy day, we knew that we could depend on our local bank. We had no such assurance that you could depend on a bank, let's say, in New York, Philadelphia, or Chicago, or any other place, and consequently it was worth that to us to have that assurance that we could depend on them, that if economic conditions, not necessarily with our company but economic conditions in general got so that a bank had to pull in its horns a little, that they were going to take care of their local borrowers first.

Now as far as opening a borrowing from two banks, as an example, in our trade area, the only other large bank I had dealt with prior to dealing with Third National, I don't mean to cast any reflections on the other bank, but they just weren't the bank for us, because we have got some very decided views about what we have got a right to expect of a bank. It's more than a place just to make deposits or borrow funds.

[fols. 1840-1845] You expect to use the services of the bank, you expect their good offices to be used in your behalf, and, Lord knows, I've had enough experience in it.

Now in the Third National, you could absolutely depend on it. On the other hand, it would be absolutely unfair in my opinion to split up the business—after all, a bank is like any other business, they've got to make money. That's what they are there for, naturally, to go and take the cream off and give it to somebody else and yet expect them to perform all of these services for you, would have been utterly unfair.

Q. Has your company ever borrowed from the Nashville Bank and Trust?

A. No, sir, frankly I didn't even know they were a commercial bank until I read in the newspaper about this present case. To my knowledge, I've never met anybody from the bank; I don't know anybody associated with the bank.

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[fol. 1846] Cross-Examination.

By Mr. Minicus:

Q. Mr. Cohn, you have testified that your main office is at Clarksville, Tennessee, forty to forty-five miles from this city. Is that correct?

A. Yes, sir.

Q. You have an office at Ashland City, twelve or fifteen miles from this city?

A. That's correct, sir.

Q. You have one at Springfield, twenty miles from this city. Is this correct, sir?

A. I judge roughly, yes, sir.

Q. And did you not also testify, operating within those [fol. 1847] distances, that you did not know that Nashville Bank and Trust Company had a commercial bank?

A. Very true.

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[fol. 1848] CHARLES W. COOK, JR., a witness called by and on behalf of the Defendant Banks, was first duly sworn, was then examined and testified as follows:

Direct Examination.

By Mr. Farris:

Q. Mr. Cook, state your full name and give your address and your age.

A. My name is Charles W. Cook, Jr. I live at 411 Brookfield Drive. I am thirty-one years old.

Q. Are you an officer of the Third National Bank?

A. Yes, sir, I am assistant vice-president of the Third National Bank.

Q. Mr. Cook, what is your educational background?

A. I graduated from Yale University in 1956, with a bachelor of science in business administration. I received the Standard and Pre-Standard Certificates of the Nashville Chapter of the American Institute of Banking. I am presently enrolled at the Stonier Graduate School of Banking at Rutgers University.

I completed my thesis, and I am a candidate for graduation this June.

Q. What has been your work primarily for the last two years with Third National Bank?

[fols. 1849-1894] A. Starting immediately after the announcement of the contract to merge on March 12, I commenced actively working in the preparation of the application to merge, which was filed on April 27, 1964. I have subsequently worked quite a bit of time in preparing additional information in connection with the merger and answering interrogatories that were propounded by the Justice Department and all other phases of the work connected with merger.

In addition, I have been director of the bank's advertising program. I serve as commercial loan officer and I am treasurer of the Third Small Business Investment Company. I am also secretary to the Officers' Loan Committee.

[fol. 1895] CHARLES W. COOK, JR., the witness on the stand at the close of the previous day's session, resumed the stand, was further interrogated and testified further as follows:

Direct examination. (resumed)

By Mr. Farris:

Q. I will ask you, Mr. Cook, have you engaged in research into the historical relationship or connection between the Hill family and the Cheek family?

A. Yes, sir, I have.

Q. Explain what that research has involved.

A. This has involved to some extent discussion of this relationship with members of the family—of the two families, I should say. It has also involved some searching through the archives of the old Nashville Trust Company. Among the documents are accounts entered into [fol. 1896] between the Nashville and American Trust Company and H. G. Hill, acting on behalf of himself and his associates.

Q. That's H. G. Hill, Sr., you are talking about?

A. That's right. Among his associates were included his son, H. G. Hill, Jr., who became the second largest stockholder of the Nashville Trust Company; and members of the Cheek family, who outside of the Hill family became the second largest holders of stock in the Nashville Trust Company.

It might be pointed out that Mr. Robert Cheek, at the time the Hill and Cheek families took over the Nashville Trust Company, Mr. Robert Cheek was connected with General Foods Corporation and served on that executive committee up until about five or six years ago.

The General Foods Corporation had sometime in the early part of this century acquired from the Cheek family what is now known as the Maxwell House Coffee Company, and the Cheek family was the developing interest in the Maxwell House Coffee Company; and, as everyone knows, it is now a subsidiary of the General Foods Corporation. Mr. Robert Cheek served on that board and was a member of the executive committee up until recent years.

Because of this relationship between this food account, the coffee company, and the H. G. Hill wholesale grocery

business, there grew both a personal and a business [fol. 1897] relationship between these two families. Over the years this relationship has become more of a personal relationship than it has a business relationship.

Q. Reference was made to the fact that Mr. Robert Cheek is now director of Third National Bank. I would like to ask you: Was he a director of Third National Bank as of March 12, 1964, when the merger was first announced?

A. No, sir, he was not. I might point out that Mr. Robert Cheek—first of all, national banking laws restrict the number of directors of a national bank to twenty-five men.

Mr. Robert Cheek is not listed as a member of the active board of directors of the Third National Bank even today. However, he is chairman of the trust committee, of the trust board, which was a separate organization.

Q. Now then, turning on over to page 18 of that Interrogatory, I want to ask you again with respect to the $1,500,000 listed there as being a deposit from the Nashville Bank and Trust Company trust department, and ask you to state why that item was included.

A. This item was included for two reasons. The first of these reasons was the fact that on May 11, 1933, Mr. H. G. Hill arranged an RFC loan, in addition to gathering a number of associates, including the Cheek family to his side, with the intent and effect of investing in the Nashville Trust [fol. 1898] Company, then known as the American and Nashville Trust Company, so that the trust business would not fail or that this trust company would not fail.

Mr. Hill guaranteed an RFC loan, and had it not been for Mr. Hill and his philanthropic interest in maintaining what he was quoted as saying at the time—the finest trust company in the city, or certainly to build the finest trust company in the city—had it not been for his interest, this trust department would not have existed in 1963.

Q. Is it also true that a substantial number of the trust accounts in that department are trust accounts of the Hill family and the Cheek family?

A. Yes, sir, it is; and that is the second reason for this being included on page 18, is the fact that a major portion of the—a substantial portion of the—trust accounts are attributable to the Hill family and the Cheek family.

Q. Now, with respect to the $2 million listed on that page

in the name of the State of Tennessee, State Treasurer, will you state why that item was included?

A. Yes, sir, I will. We might include that as well as the war loan and tax account in the same explanation, because the two are very much related. The war loan and tax account was carried on the ledgers of the Nashville Bank and Trust Company under the title that was used for that account during World War II.

[fol. 1899] This account is now known as the Treasury Tax and Loan Account, but the ledgers will never change.

The funds that are put into the account or deposited to the account of the State of Tennessee represent in the main part state sales tax deposits derived from the H. G. Hill Grocery Company.

Mr. Minicus: Objection, Your Honor. That question is clearly too indefinite. I don't know what he means by the main part. I should imagine there would be a lot of that tax money that came from other sources in the city than the Hill Company.

The Court: Read his answer back.

(Reporter read the last part of the last answer.)

By Mr. Farris:

Q. Where is the majority part of the other, other than that?

A. The major part of the treasury tax and loan account represents excise taxes and withholding taxes collected and deposited for the United States Government from the H. G. Hill Company, and the other accounts that are listed in this answer as being attributable to the H. G. Hill interest.

I might point out that any bank, in soliciting accounts, has an order of priority for the solicitation of those accounts. The first priority is to solicit the main [fol. 1900] account, the main banking relationships.

Many times a relationship has been established with a bank and it cannot be moved. So the bank soliciting this account will go after perhaps a payroll account. Even there, in many instances, the customer or prospective customer will not feel that he should move any of his funds to another institution.

[fol. 1901] However, as a third priority, many prospective customers are willing to make their state sales tax deposits and their withholding and excise deposits to another institution, for the simple reason that they have got to make these payments anyway, and they don't have to close out an account or rearrange any of their banking relationship. They don't have to formally open an account up when they make these deposits in another institution, and it is a convenient way of a man who wants to compliment another bank, it is a convenient way for him to so compliment this other bank without upsetting his existing banking relationship, and to the same extent that all of the other firms that are listed in here are directly or indirectly attributable to the Hill interests, the substantial, major part of both the State of Tennessee deposits and War Loan and Tax account deposits are also attributable directly or indirectly to the Hill interests.

Q. From either Hill Grocery Company or related accounts?

A. Yes, sir, directly or indirectly.

Q. And that's your reason for including those items on page 18 of this answer to the interrogatory?

A. Yes, it is.

Q. Now, Mr. Cook, referring back to the first page of this interrogatory, the answer has a paragraph which I ask you to read that paragraph and ask you if that is [fol. 1902] your testimony, not only when that interrogatory was written, but is that your testimony today?

A. Would you like for me to read it?

Q. Yes, please.

A. "In a very real sense, it may be said that one hundred per cent of the deposits of the Nashville Bank and Trust were attributable directly or indirectly to the Hill interests. Mr. H. G. Hill, Sr., assumed absolute control of the Nashville Bank and Trust during the crises of 1933. Without his guidance, the injection of his capital, and his widely-held reputation of unquestioned integrity, it is doubtful that the Nashville Bank and Trust Company could have survived.

"Under both Mr. Hill, Sr., and Mr. Hill, Jr., the Nashville Bank and Trust has been known as 'Mr. Hill's bank'. This association of the Nashville Bank and Trust with

the Hill interests provided the reputation for sound and conservative banking which was instrumental in attracting and holding deposits. Certain accounts, however, are identifiable directly or indirectly with the Hill interests. Following is a list by name, address, business, type of account, relationship with the Hill interests, and approximate average balance for 1963, deposit accounts attributable directly or indirectly to the Hill interests in Nashville Bank [fols. 1903-1911] and Trust. This list totals $16,363,276, or 37.4 per cent of the average daily deposits of the Nashville Bank and Trust during 1963, which were $43,776,372. Where more than one relationship of the Hill interests exists, the account is listed under the most pertinent category."

Mr. Farris, you asked me if my opinion, if this, if I agree with this statement today, and I would say in light of the research that I did yesterday, the archives that I have developed, that my opinion is stronger than it is stated here.

The editorials that were in the Nashville newspapers at the time commending Mr. Hill certainly showed him to be a man of means who was respected and admired throughout the business community, and for whom the business community expected the bank to go forward—with whom the bank was expected to go forward.

*　*　*　*　*　*　*

[fol. 1912] By Mr. Farris:

Q. Now, Mr. Cook. I believe you have served as a branch bank manager, have you not?

A. Yes, sir, I have.

Q. What branch have you been manager of?

A. I was manager of the Capital Hill office, located on 442 James Robertson Parkway.

[fol. 1913] Q. Now I believe you are also a member of the Officer Loan Committee at the Third National Bank?

A. Yes, sir, I am secretary of that committee.

Q. Does that Officer Loan Committee establish authority of branch bank managers with respect to lending money?

A. Yes, sir, it does.

Q. What is the authority of a branch bank manager of

Third National Bank with respect to making loans based on his own decision without approval from anyone else?

A. This varies depending upon the size of the branch, the needs of the area serviced by the branch, but in general it ranges from a few thousand dollars to a high of 25,000 dollars.

We have one branch manager who has a loan limit of $25,000. We have a number of branch managers who have loan limits of $15,000. This loan limit means they can make a loan without coming to the main office or calling the main office for prior approval of the loan, and it gives them a great deal of flexibility in managing their own credit operations within their own branch bank.

Q. Now from your experience as a branch bank manager, have you observed the extent of competition, if any, among branch bank managers of the same bank?

A. Yes, sir. I have. The success of any branch mana-[fol. 1914] ger to a large extent is dependent upon his ability to bring his branch up to a level that exceeds the other branch banks.

Now there are certain physical limitations and other limitations that restrain a branch bank, but branch bank managers rather vigorously compete with each other. Certainly not to the detriment of the organization as a whole, but certainly there is a branch bank rivalry for accounts, for loans and for all types of business.

Q. Now how does that branch bank rivalry affect the convenience and needs of the community?

A. I think that this rivalry certainly provides the banking public with an opportunity to receive a number of choices as to where they might be doing their banking business. There is a great deal of proof both statistically and otherwise as to the importance of convenience of branch banks.

I think this applies primarily, however, to the deposit function of a bank. When it comes to the credit function, I think that in addition to convenience, a great deal of the reasons, a great many of the reasons that a person utilizes a particular location is due to the other intangibles that are involved in decision making.

Some of these would be the image of the institution as a whole, the personality of the loan officer with whom

[fol. 1915] this person borrowing has been dealing, the reputation the bank has for the accessibility of loans.

Many other factors that cause a person to make a subjective decision. I know this to be true for the simple reason that I have seen customers continue to deposit money in a branch bank even though the branch bank manager might have moved to another location, and while they will continue to make their deposits at that branch bank, they will continue to borrow from the branch manager who had been moved and they will follow him.

It's a very difficult process, we don't want our customers necessarily to follow us, we want them to stay at that branch where possible, and it's very difficult in many instances to break these people away from this individual. Sometimes we don't succeed in this. Of course we want to do what the customers wants us to do.

Q. Have you ever known a branch manager to make a loan that another branch manager had turned down?

A. Yes, sir, I have.

Q. Now, Mr. Cook, Professor Wolf testified to the effect that:

> "With a marginal borrower, the more choices among banks or the more alternatives this marginal borrower might have in his local community, the better chance he would have to get a loan."

[fols. 1916-1918] Do you agree with that?

* * * * * * *

[fol. 1919] A. Mr. Farris, in order to dispel to some extent the doubts as to the experience I might have had in regard to the administration of credit in the bank, I have spent a year in two other branches prior to moving to the credit department of our bank where I worked for three years, and in doing so, I was aware of the loan applications and loans that were made throughout the entire bank which at that time had fifteen branches.

After leaving the credit department, I went to manage the branch on Capital Hill. In addition, I have been teaching for three years credit administration and analyzing financing statements, two courses that are offered to the Nashville—or by the Nashville chapter of the Ameri-

can Institute of Banking. I might add that in my last class, I have banks from eight communities represented in that class outside of Nashville.

Now in regard to the question which you have asked me, I would say that the marginal borrower or any borrower has a number of choices within the downtown area of Nashville.

[fol. 1920] At the present time, there are five banking offices headquartered in downtown Nashville, and those banking offices have at least another five branches in downtown Nashville, which gives within the banking community itself ten choices.

In addition, there are quite a number of branches totalling some fifty-four or five throughout Davidson County.

In addition to the commercial bank offices, a borrower has the opportunity of going to savings and loan associations, increasing his mortgage on his home to pay for college educations, to pay for cars, to pay for any number of consumer expenditures through what is known as an open-end mortgage, or he can refinance his house on a closed-end mortgage.

[fols. 1921-1950] A man can go to a small loan company. A man can go to Associates Capital, which is a larger finance company. A man can go to any one of the automobile finance firms such as GMAC and the Ford Motor Credit.

As a practical matter, the marginal borrower is very much limited to the bank where he has his major and only relationship. The marginal borrower is not likely to have more than one bank connection to start with. This would be through a small checking account and perhaps a small savings account.

This being the case, his application for a marginal loan at another institution is going to be looked upon with a great deal of criticism for the simple reason that the man has never maintained any type of relationship with that bank so that he would be known to that bank.

I might add, in addition, that there are a number of credit unions which are also available to the marginal borrower or to any borrower.

* * * * * * *

[fol. 1951] Cross-Examination.

By Mr. Weinbaum:

Q. Mr. Cook, I would like to return for just a moment to Interrogatory No. 5.

A. I don't have it. Yes, I do; I am sorry.

Q. At page 13, at the bottom, and continuing on, there are accounts which are stated to be directly or indirectly attributable to the Hill interests. And you, I believe, testified on direct examination that Mr. Cheek was a large stockholder in Nashville Bank and Trust Company. Is that correct?

A. Yes, sir.

Q. Moving on to page 18, Mr. Cook, under Item 6 at page 18—

A. Let me back up just a minute, in regard to your last question. The Cheek family as a whole; I won't say any one Mr. Cheek, but the Cheek family, was the second largest holders of Nashville Bank and Trust stock.

They were not the controlling interest by any means. [fol. 1952] The H. G. Hill family owned control of the Nashville Bank and Trust stock.

Q. But collectively the Cheek family had a substantial amount of stock?

A. They had the next largest holdings of any other family group.

Q. Page 18, Item 6, Mr. Cook: The first account set out there, a checking account of $1,500,000. Does this checking account represent moneys from all the trusts in the Nashville Bank and Trust Company trust department?

A. It does not represent all the moneys in the trust department, no.

Q. All of the moneys in the Nashville Bank and Trust Company—are these funds in the checking account derived from various trusts?

A. Yes.

Q. And it is your testimony that these moneys are derived only from those trusts that are in some way directly or indirectly attributable to the Hill interests?

A. No, sir.

Q. Can you venture any sort of an opinion with regard to the amount of these moneys which would be directly

or indirectly derived from—these moneys derived from trusts directly or indirectly attributable to the Hill interest?

A. Yes, sir.

[fol. 1953] Q. Can you state the approximate amount of these moneys which would be so attributable?

A. I would say somewhere in the neighborhood of $650,000 to $750,000.

Q. About half?

A. Yes.

Q. So that, as to the other half of this one and a half million dollars, they would not be attributable directly or indirectly to the Hill interests?

A. No, sir, that's not correct. There are two reasons for this account being included in this category, one of which is the fact that a major portion of the moneys in the account come from trust accounts directly or indirectly attributable to the Hill family.

The other reason was the fact that, had it not been for Mr. Hill's benevolence in taking this bank over in 1933, there would not have been a trust department from which these moneys could have been derived at all.

Q. At most, then, would you say, Mr. Cook, that this other aspect is a very indirect attachment to the Hill influence?

A. I wouldn't say very indirect, no, sir.

Q. To whom, Mr. Cook, do the moneys in the State of Tennessee account belong, this $2 million item?

A. Once they are deposited in that account they be-[fol. 1954] long to the State of Tennessee.

Q. With regard to the War Loan and Ta. Account, to whom would those moneys belong?

A. The United States of America.

Q. At the beginning of this Interrogatory, Mr. Cook, it is stated that in a very real sense it may be said that a hundred percent of the deposits of the Trust Company were attributable directly or indirectly to the Hill interests.

I wonder whether you can state why six months after the merger, six months after the sale of the H. G. Hill Company stock, the deposits were substantially the same as they were when Mr. Hill sold his interest?

A. No, sir. I can't say.

Q. You have indicated that a branch manager has authority to make a loan ranging from $2,000 up to $25,000, and that many had a $15,000 loan authorization limit. Can you state for us approximately the amount of loans in dollar volume that are handled out of the head office of Third National Bank?

A. I believe an Interrogatory that we answered showed this information. I don't have it just right on top of my head. As far as numbers of loans, I think that the vast——

Q. I am talking about dollar volume. The Interrogatory indicates eighty-one percent of the loans handled out of the main office.

[fol. 1955] A. By dollar volume or by number?

Q. By dollar volume.

A. If that's what it said, I would agree with it.

Q. Part of the application is being put into the record, pages 75 through 78. I have just a couple of questions. As a member of the officer loan committee, Mr. Cook, do you have any familiarity with the credit department of your bank?

A. Yes, sir.

Q. With regard to the credit department, is one of its important functions the accumulation of credit information so that the bank is able to properly assess the risk involved in making a loan to a customer?

A. I wouldn't word it quite that way. In most instances the assesment is made after the loan is made. The credit department is charged primarily with the responsibility of reviewing the financial statements of the customers and throwing up a red flag in the event that it appears a customer is getting into financial difficulty.

I would say that less than ten percent of the loans are reviewed by the credit department prior to the loan being disbursed.

Q. With regard to making a loan, then, prior to the time the loan is made, the credit department does not play a major function in determining the credit worthiness of the [fol. 1956] individual?

A. It depends on the individual loan, but our loan officers—not just in our branches, but even in our main office—have a great deal of authority to handle loans with-

out having a review of the situation by the credit department.

Our loan committees are established for this purpose. The credit department is as much a followup on the credit as it is a function of approving the credit or disapproving the credit, or recommending or not recommending it prior to the disbursal of the loan.

In many instances the borrower does not have time to sit around and wait for the credit department to thoroughly analyze the financial statement. When he comes in he usually comes in after he needs the money. I think we found this as being true for years and we can't educate our borrowers to do anything else but this. It was always yesterday that they needed the money.

Q. So that, as a condition precedent to making a loan, the credit department does not always play a very important role in passing on the credit worthiness of a customer?

A. Again, it depends on the loan itself. Some loans we have time and they do play a major part. Once the [fol. 1957] loan is made they play a major part in looking after the loan for the loan officer.

Q. Would you say that the credit department's role after the loan is made—that your credit department operates to a larger extent after the loan is made than before it is made?

A. It's hard to say, because each loan is handled differently. They each have their own characteristics. It is hard to generalize.

Q. With regard to marginal borrowers. Mr. Cook, you have indicated they are not likely to have more than one banking connection. I wondered if you could explain your reasons for this statement a little more fully?

A. Of course the term marginal borrowers has never been fully defined. To my way of thinking, my own idea of a marginal borrower is a man whose credit is going to be somewhat open to question. This man, if he has a bank account, is not going to be able to afford to maintain accounts in more than one bank, if he has an account at all.

Does that answer your question?

Q. If a man is a marginal borrower, this means that

he probably isn't able to maintain a deposit in more than one bank?

A. My guess is, if he is a marginal borrower, he is also a marginal depositor. He is writing checks in some in- [fol. 1958] stances where he doesn't have the money in the account.

Q. Mr. Cook, Third National prior to the merger was approximately eight to nine times larger than the Trust Company. Is that a fair statement?

A. Seven and a half; somewhere in that range.

Q. You have indicated that just prior to the merger itself, Third had 3200 direct auto loans outstanding.

A. Right.

Q. And that the Trust Company had 1600 direct loans outstanding. What significance do those figures have in your judgment?

A. The significance to me is the fact that the Third National Bank, without emphasizing direct loans, was making more direct loans than the Nashville Bank and Trust Company was making with emphasis. It indicates to me that the effectiveness of their advertising may not be as good as it might have been.

Q. You stated that the Nashville Bank branch of Third was or is advertising direct auto loans.

A. It has, yes, sir.

Q. Since the merger?

A. Yes, sir.

Q. Was this on a frequent basis?

A. No, sir.

Q. Were they isolated instances of advertising direct [fols. 1959-1967] loans?

A. Isolated in what respect?

Q. Not very frequent.

A. I would say it was not very frequent.

Q. And are you still advertising such loans obtainable at the Nashville Bank and Trust Company branch, loans on a direct basis?

A. The advertising was never done on a regular continuing basis. We have done it since the merger and we are apt to continue to do it. But we haven't done it in the past month.

Q. Excuse me?

A. We haven't done it in the past month. But that doesn't mean we might not do it sometime in the future.

Q. Can you state when these ads ran? Were they run in the newspaper?

A. No, sir, they were not.

Q. How was the advertising done?

A. On a direct mail basis.

Q. And this was done on more than one occasion; is that correct?

A. Yes, sir.

* * * * * * *

[fol. 1968] Q. We will move on now to the Defendants' Exhibit 33, Mr. Cook, which is a map and an attached tabulation purporting to indicate the changes in use of branches that has occurred because of the merger.

You indicated on your direct testimony that this survey was made over a brief period of time early in 1966. Can you tell me what instructions were given to the people in these branches for ascertaining the information that you have compiled?

A. Yes, sir. I don't have a copy of the memorandum with me, but I sent a copy to each of the branch managers in which I asked them to ask their employees—tellers, secretaries and so forth, as well as themselves—to list [fol. 1969] the names and addresses to the extent possible of the persons that they recognize to be former Nashville Bank and Trust Company customers.

Q. How were they to attempt to ascertain whether they were former Nashville Bank and Trust Company customers?

A. By their own personal knowledge and by other indications which might have been readily apparent in regard to the savings passbook number of their savings account or the fact that they come in to handle a loan that was originally established at the Nashville Bank and Trust Company; or the fact that their checking account deposit slip had an indication on it that it had been at the Nashville Bank and Trust office.

Some way that they could definitely know that these people had been customers of the Trust Company.

Q. Is there any way of telling whether they had been common customers of both banks prior to the merger?

A. No.

Q. You don't know whether they would have been or they wouldn't have been?

A. No.

Q. When you speak of former Nashville Bank and Trust Company customers, Mr. Cook, do you mean that these people purportedly came directly from their former Nashville Bank and Trust Company association to Third National Bank, or that they may have at sometime in [fol. 1970] the past been Nashville Bank and Trust Company customers?

A. No, sir, we are referring to those who were known to have been Nashville Bank and Trust Company customers at the time of the merger.

Q. Did these people fill out any sort of applications to open accounts, on which application card it may have indicated, "Where did you do your banking previously?"

A. We do not have such an application card.

Q. So that this tabulation is based on whether or not the employees at these various branches of Third recognized these people to be Nashville Bank and Trust Company customers?

A. Yes, sir. This thing was done in such a way that these people were asked if they had a personal knowledge of this relationship. In other words, the teller had to know the man by name and know something about him to have been able to list his name in the first place.

That is the reason this study is merely a poor indication of the number and extent to which Nashville Bank and Trust Company customers are now using Third National Bank offices.

Q. And this poor indication which you refer to indicates those people who didn't want to do business with Third before the merger, but are doing business with Third now? Wouldn't that be correct?

A. No, I would not say that that is necessarily correct.

[fol. 1971] Q. That they did want to do business with Third before the merger? Is that what you are saying?

A. No, I am not saying that. You are putting words in my mouth.

Q. When you indicate in this survey that these figures represent customers now using your Third National Bank branches, what do you mean? Are they using it on a regular basis?

A. In most every instance, yes.

Q. How were these people making this survey able to ascertain whether this was on a regular basis?

A. In many instances a teller will develop a relationship with the customers that he is servicing, and people will stand in a long line waiting to get to their teller, rather than to go to a teller who has no traffic at his window.

In most of these instances these people knew by virtue of the fact that people were showing up every day—or frequently. I won't say every day.

Q. With regard to the last two figures on this exhibit, Mr. Cook—that is, the figures indicating the number of customers of Third now using the two branches of Nashville Bank and Trust Company—what would those figures indicate to you?

[fols. 1972-1978] A. They would indicate that the Nashville Bank and Trust had offices that were now convenient to Third National Bank customers. I might point out that, of the number using the main office or using the 315 Union Street office of the Nashville Bank and Trust Company, a large number of persons are in the building occupied by the Nashville Bank and Trust Company. That's an eleven- or twelve story building, and adjacent to it it is another eleven- or twelve-story building, with access directly to the main banking lobby.

The compilation does not show by numbers how many of those customers worked in those two buildings. But I expect a study of their names would indicate that probably seventy-five or eighty percent of them worked in those two buildings.

* * * * * * *

[fols. 1979-1985] WILLIAM THOMAS COTHRAN, a witness called to testify by and in behalf of the defendant banks, after having first been duly sworn, was examined, and testified as follows:

Direct Examination.

By Mr. Farris:

Q. Mr. Cothran, please state your address and the position you hold.

A. My home address is 3316 East Briarcliff Road, Birmingham, Alabama, and I am president of the Birmingham Trust National Bank in Birmingham.

* * * * * * *

[fol. 1986] By Mr. Farris:

Q. Now, Mr. Cothran, have you studied the management chart which is an exhibit, I believe Number 15, in this case, which management chart is of the Nashville [fol. 1987] Bank and Trust Company?

A. Yes, sir.

Q. As an experienced banker, and a bank president, what does that chart indicate to you?

A. It indicates to me that the bank is lacking in a basis for competing in its market because of the age of the—the general age and average age of the officers, and the low salaries which are paid to them are definitely not competitive.

Q. Now what other——

A. I think it would be difficult to attract young men into the bank or if they were attracted to the bank to start with and found out how far along the men who were ahead of them had progressed both salary-wise and the long period of time, it would be very discouraging to them.

Mr. Hunter: Your Honor, I object to the salaries—saying that the salaries were non-competitive. There is no showing that this man has examined the bank competitive salary structures in Nashville and in Tennessee. I wonder if he's basing his opinion on Birmingham, or——

The Court: Well, you might ask about the salaries, how he arrived at his conclusion.

Mr. Farris: Yes, sir.

[fol. 1988] By Mr. Farris:

Q. The chart you have examined showed the salaries of the officers, did it not?

A. Correct.

Mr. Hunter: It doesn't show compared with other banks in Nashville. The only thing it shows is——

Mr. Farris: If the Court please, that's argumentative; he's entitled to express an opinion.

The Court: Yes, he can express an opinion.

Mr. Minicus: He said competitive. He didn't say higher or lower. It must be competitive with something, competitive with what. If he only has the chart there on the Nashville Bank and Trust Company, I can't see what he can compare it to to get a competitive evaluation.

The Court: What is your comparison of the salaries?

The Witness: Well, in my job, I have got to be able to evaluate, to present to our Board of Directors, recommendations for promotions and salary increases. As a part of the background for the preparation, I must determine and obtain confidential information from banks elsewhere, and I come primarily to the cities in the south whose problems and whose local conditions are more simi- [fol. 1989] lar to ours. As an exchange of information between us——

The Court: Yes, I understand that, but when you testified these salaries were non-competitive, were you speaking of the Birmingham situation or the situation in Nashville?

The Witness: I was thinking of the southeast in general.

The Court: Southeast.

The Witness: Yes, sir.

The Court: Do you feel competent to express an opinion about Nashville insofar as salaries are concerned?

The Witness: Yes, sir, and based largely on this exchange of information with other banks in other cities. We also belong to a group of banks who share annually our confidential salary information and job analysis through a management, private management group, so that none of us know what other banks it is. They com-

pare average salaries by job classification and title.

The Court: How do salaries compare in the southeastern part of the United States? Are they comparable?

A. They are comparable in the larger cities. We are not comparable with the major cities elsewhere in the [fol. 1990] country, and I believe that we have gained faster, the last three surveys that banks in the southeast are generally upgrading their salaries and I believe upgrading their personnel faster than other sections of the country.

The Court: Well say a city—what is the population of Birmingham?

The Witness: The population of Birmingham I believe is about 385,000.

The Court: Is that the metropolitan area?

The Witness: The metropolitan area they expect to pass 700,000 in the next year or two.

The Court: How would bank salaries compare in say Nashville, Birmingham, Atlanta, and Memphis and so on?

The Witness: We are very comparable

The Court: Those cities are comparable?

The Witness: Yes, sir.

The Court: I think he's competent to testify.

Go ahead.

By Mr. Farris:

Q. Now you have expressed an opinion with regard to the management chart which you have studied. Aside from the comments you have made, does that chart indicate to you the number of replacements likely to be needed by [fol. 1991] that bank in a short while following the date of the chart?

A. The number?

Q. Yes.

A. On the chart?

Q. Yes.

A. Just looking at the age, most banks in the southeast, in the larger cities, figure 65 is normal retirement age. Some will permit officers to stay on after that; some have compulsory retirement. Using that as a yardstick, it would seem that six or eight of these gentlemen were ready for retirement within the next year or two, and some of them

are already past normal retirement age, which means that replacements should be trained and ready to take their place several years ahead of that.

Q. Now, from your experience in the banking business, would a number of replacements such as the number indicated on that chart be easy to fill?

A. No, sir, I think they would have difficulty on their salary scales as evidenced by that chart, plus the general shortage of qualified and experienced bankers today.

Q. What program do you follow in your bank with respect to providing for management succession?

A. Well, starting at the bottom, we have what we call a management training program. That's interviewing and obtaining good college graduates to come into that pro- [fols. 1992-1994] gram. It's a two-year, intensive training program. Upon completion they are assigned to the several departments of the bank. From there it's a steady evaluation, steady training. We send them—we keep about nine men in three-year graduate schools each year, and encourage all of our younger officers and other personnel to take American Institute of Banking Courses, and we try to have a bankup man for every job in the bank. We don't always have them, but that's the end aim. Number two for each job.

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[fol. 1995] By Mr. Farris:

Q. Mr. Cothran, in addition to studying the management chart of the Nashville Bank and Trust Company, what other material with respect to the banking situation in Nashville have you studied?

A. The Birmingham trading market and banking market overlaps the Nashville trading and banking market [fol. 1996] in the area of North Alabama. In other words, we compete directly with Nashville banks in that geographical section.

Mr. Minicus: I move that that answer be stricken, Your Honor. I think he should designate which Nashville banks he is competing with in that section. Does he mean he is competing with the Citizens Bank, or the Bank of Goodlettsville? He said, "We compete with Nashville banks in that area."

I think it would only be fair to the record to show which Nashville banks.

The Court: You can bring that out on cross-examination. He had just talked about the general picture.

Mr. Minicus: Yes, sir.

By Mr. Farris:

Q. Does your competition, then, with the Nashville banks in the North Alabama area give you personal knowledge of the competitiveness of the banks you come in contact with?

A. Yes, sir.

Mr. Hunter: Excuse me. Was that answer limited to Northern Alabama, or to overall competition?

Mr. Farris: That's what he learned by contact with those banks.

The Court: The only place he indicated was Northern Alabama.

[fol. 1997] The Witness: That's all I have stated, yes, sir.

By Mr. Farris:

Q. Are you also acquainted with the reputation in banking circles in general with respect to the Nashville banking market and the competitiveness of that market?

A. Yes, sir. I know a number of people in the banks in Nashville. We have customers in common. Birmingham concerns have Nashville operations, and Nashville concerns have operations in Birmingham. I have knowledge of the Nashville market through those connections and, as I stated previously, we are encountering Nashville banking competition increasingly in the area in North Alabama in which we overlap.

In fact, they are getting down in South Alabama and central Alabama—but not as strong as in North Alabama.

Q. How would you describe the competition in the Nashville banking market from your observation of it?

Mr. Hunter: I object, Your Honor. This witness said he wasn't qualified to speak on that. The competition he meant was in Northern Alabama.

Mr. Farris: He knows banks in Nashville from coming in contact with them in that area. If the Court please, I believe he is competent to have an opinion about it. Also he knows the reputation of the Nashville banks, and this is in addition——

[fol. 1998] Mr. Hunter: If he wants to go into the reputation of the banks, that's fine. But the competition of the banks in Nashville is another thing.

The Court: How would you describe the competition in Nashville? What do you mean by that? Whether it is intense or what? The degree of it?

Is that what you are getting at?

Mr. Farris: I am asking him about that, yes.

The Court: That's what I want to know.

Mr. Farris: I want him to describe the competition among the Nashville banks.

The Court: Are you familiar with that?

The Witness: Of course I am not as familiar with it as a bank officer living here twenty-four hours a day in Nashville is. But the fact that I have been engaged in the banking business in Birmingham since 1946 and do have the relationships that I previously expressed, I have observed that the banking competition in Nashville is quite great. It is very keen.

Our folks that travel North Alabama tell me that in their opinion Nashville banks are calling more aggressively on our mutual prospects and mutual customers in that area.

Mr. Minicus: This is completely outside of all relevant [fol. 1999] matter, Your Honor. We are talking about the elimination of Nashville Bank and Trust Company. There is no showing that Nashville Bank and Trust Company ever competed in Northern Alabama or was any place that the witness's representatives would have run into them in that area.

The record is clear that Nashville Bank and Trust Company was confined to Davidson County.

Mr. Farris: If the Court please, it is our insistence that this merger has brought about a net gain in competition, and that's a broad statement. The net gain in competition can reach out as far as any of these banks do business,

and that comes under the heading of convenience and needs.

The Court: You are speaking of the present-day situation?

The Witness: Yes, sir, and dating it up from prior to the merger here.

The Court: I think it is competent.

The Witness: Could I state something, Mr. Farris?

By Mr. Farris:

Q. Yes, sir.

A. We call at least twice a year on our customers located here in Nashville that control business in Birmingham. In effect we are competing with Nashville banks on [fol. 2000] their own doorstep; and officers of some of the local banks are in Birmingham calling on their direct customers down there.

We do have a measure of direct competition other than businesses and banks located in North Alabama.

Q. Thank you, sir. Would you compare the competition today with the competition of three years ago?

A. In Nashville?

Q. Yes, sir.

A. I would say, from observation, from the reports of our people who are in direct contact and from my own observations, that competition is stronger among the banks in Nashville today than it was three years ago, sir.

Q. Now, Mr. Cothran, to what extent do you believe larger lending limits serve the needs of a bank's community?

A. I think that the larger lending limits enable banks that have them to better serve the community, to keep more business at home, because there are many businesses in the Southeast whose sound credit requirements exceed the legal limits of the smaller banks and even the larger banks within a location.

That means that either those companies must go outside the state, go to a competitive institution, or that their local bank must seek an overline or another bank to take that part of the credit that is in excess of their legal limits.

[fol. 2001] It is only natural that that bank is not going across the street to his competitor to ask him to take the overline. He is probably going out of state to get one of his larger correspondents—in New York, Chicago, or somewhere else, to take that overline.

That means that money is, that interest is, going out of state instead of staying there locally; whereas if the bank had a larger legal limit to take care of that business by itself, it would not have to seek an overline nor would the borrower have to seek another bank somewhere else outside the state.

Q. Do you think it benefits the community for the interest to stay there locally?

A. Yes, sir.

Q. Do you have an opinion with respect to whether the economic development of the South requires larger banks to serve Southern industry?

A. Yes, sir.

Q. Would you state that?

A. I think in the past so many of our companies did their main business in New York, Philadelphia or Chicago. The pressing reason was that the banks in their localities were not large enough to serve their needs, didn't offer the services.

I hope and believe that we banks in the major cities [fol. 2002] in the Southeast have done a good job in the last decade in overcoming that. We still have a long way to go. By our increased lending limits, by the increased services we are offering, we are bringing back more of that business to our repective cities.

Q. Now, Mr. Cothran, considering your experience as a banker, your study of the management chart of Nashville Bank and Trust Company, including the many vacancies which occurred among its key executives in a comparatively short time, and considering further the fact that Nashville Bank and Trust Company had, prior to the merger, only approximately five percent of bank deposits and only two out of over fifty banking offices in Davidson County, and considering further that First American, the largest bank in Davidson County, has continued to grow and to be the largest; that Commerce Union, the third in size, has increased its share of de-

posit totals since the merger; that Capital City Bank, the fourth in size, has continued to grow and has now reached over ten million dollars in assets, what in your opinion as a banker does that indicate with respect to the effect of the merger of Third National Bank and Nashville Bank and Trust Company upon competition?

A. On the face of it, and from the information available, in my opinion it has been distinctly pro-competitive, to increase competition.

[fol. 2003] Q. Further, Mr. Cothran, based upon your banking experience and assuming a city of approximately 250,000 people in a Southern community, where the three largest banks have a high concentration in the sense that they have something in the neighborhood of ninety-percent of the deposits——

Mr Minicus: Objection; that figure is not accurate. It is ninety-seven-plus.

The Court: What was your percentage, Mr. Farris?

Mr. Farris: I used the word "something in the neighborhood of ninety percent."

The Court: That is close enough. Are you talking about Nashville?

Mr. Farris: I am asking him a hypothetical question about a hypothetical city.

The Court: I know it, but you said 250,000 population. Why did you use that?

Mr. Farris: That's an example of a city. It fits a hypothetical question as well as any other. We could say 400,000, if it sounds a little better.

The Court: 450,000 sounds better.

By Mr. Farris:

Q. Let me rephrase that question, please, Mr. Cothran. Based upon your banking experience, and assuming [fols. 2004-2031] a Southern city in the neighborhood of 400,000 population and with a concentration of deposits among its three largest banks of something over ninety percent, I will ask you if in your opinion that situation is a deterrent to the organization and growth of other banks?

A. No, sir. In my opinion it would not be a deterrent.

As an example, that hypothetical case, a city of around 400,000 where the three largest banks have had over ninety percent and three new banks have been organized, I am convinced that if there is any competition, there will be—I mean, if there is no competition, there will be. But I am convinced that there is competition in an area where ninety percent or thereabout is restricted to three banks.

Those three banks will compete and the community is going to benefit from their intense competition.

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[fols. 2032-2040] DAVID ROSCOE BUTTREY, a witness called to testify by and in behalf of the Defendant Intervenor, after having first been duly sworn, was examined, and testified as follows:

Direct examination.

By Mr. O'Malley:

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[fols. 2041-2045] A. The basic commodity that commercial banking has to offer is money and credit. * * * a bank's charter in my judgment is a mandate to its management to strain every muscle to allocate funds in the direction of the greatest economic need within the community to sell the value and importance of sytematic savings to meet the legitimate credit needs of the area, whether or not they have their own funds to meet those credits; but to see that they are met if it means drawing on funds of other institutions and developing interrelationships with other institutions to do that.

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[fols. 2046-2055] Now, let's talk a minute about how the Federal Reserve fits into the picture, because you can't separate the two, and ~~it is~~ in this area that commercial banking and the individual commercial bank is a unique financial institution, but except for that, it is the only thing

that makes it a unique financial institution, because every financial institution is on the one hand gathering funds, they are bringing them in, and on the other side, they are putting them to work. They are the intermediary between whoever has some funds to be used, and whoever needs funds for use.

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[fol. 2056] One of the banks in this city helped to start and helped extend very liberal credit to Associates Capital Corporation. That company started with $100,000 invested capital twenty years ago in 1946. They have gone from that $100,000 invested capital to the last figure I personally have seen of approximately $65 million in loan receivables and have had aggressive, hard-working dedicated management the whole time.

So the system by its own characteristics and its interrelationship with the Federal Reserve System in one phase of our money cycle helped spawn and encourages expansion of financial institutions who become formidable competitors when you turn around to where you are out searching for loans again. And I think this is good, because the public is the beneficiary.

Q. Is it your testimony, then, that the single bank cannot exercise its money creation function except in conjunction with the entire banking system; that this is a [fol. 2057] banking system function rather than a single bank function?

A. The total responsibility with whether or not our money and credit expands, is not allowed to expand, or has a forced contraction, is with the Federal Reserve Board.

Q. Is this the single unique feature of the commercial banking system?

A. Yes.

Q. Is there any competition between banks involved in this creation of money?

A. Between banks?

Q. Between individual banks.

A. They compete for deposits. Of course the individual bank—we talk about earning assets or an expansion in investments and loans creating deposits. But the indi-

vidual bank has to have the deposits first because the deposits you create with an earning asset may wind up buying that copper out in Arizona and you are sitting there with your position of liquidity eating up on it.

It is a fast-moving, exciting business. They compete for the deposits; they compete for the loans. But in the area of money and credit policy, they are part of a total system and they can't be separated into this bank and that bank or this area and that area.

Q. In view of this, did the merger of Third National in Nashville, and Nashville Bank and Trust Company, [fols. 2058-2060] eliminate any competition in the creation of money and credit or make any change in policy in the money and credit system?

A. No; it couldn't have.

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[fol. 2061] Q. From your experience and judgment, is a correspondent relationship necessary to a small bank?

A. Oh, it is absolutely necessary. It is absolutely necessary, and becoming more so with the decentralization of industry.

Q. Do you have any opinion as to the size of a bank which should engage in correspondent relationships with [fol. 2062] smaller banks? What would be the ideal size of a bank in order to engage in a corrrespondent relationship?

A. I don't believe there is an answer to that by size. You would have to attain a certain size and be on a good sound profitable basis—say 150 to 200 percent of the industry averages as far as return on invested capital and earnings on assets are concerned—to be in a position to take on the expense of starting major activity that will pay dividends, but down the road.

So size would have some important significance there. But the major considerations would be the bank's personnel, their competence, because you have got to earn the business. Going out and visiting with the folks and talking about the weather and so on doesn't do a thing. You have got to be able to do something for them.

After an evaluation of your competitive environment and so on, you have to make a judgment about whether

you have got the horses or can get the horses to get in this race and to go out and be an effective factor in the market, and you have an obligation to do it, if you have assets to spread over a larger area. That's a part of the responsibility of the business.

Q. Is it necessary to belong to the Federal Reserve System if you engage in the correspondent business?

A. Well, I think it is. There are some banks that are [fols. 2063-2065] not members of the Federal Reserve System that do some correspondent bank business. Some of them have a pretty good-sized amount of business. But most of them are in areas that have a sizeable number of banks that are so-called non-par banks.

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[fol. 2066] By Mr. O'Malley:

Q. My question was: Do you consider that a bank [fol. 2067] located in a city such as Nashville with a branch of the Federal Reserve available, and which does not engage in correspondent banking—do you consider that such a bank can be considered a major competitor in the Nashville market?

A. I think, first of all, that it is an indication that the bank is not very determined to do its job. In a metropolitan area such as Nashville, which is a distribution center with lots of regional accounting, credit, and sales functions headquartered in it, and particularly a financial center as Nashville is—and this is something I want to talk some more about because I think it has a meaning—but you have a lot of interrelationships between the immediate metropolitan area and its envrons.

Murry of Ohio is a perfect example. Murry of Ohio did business with Nashville Bank and Trust Company to my knowledge because of the Nashville Bank and Trust Company's relationship with the Third National Bank.

You had a situation here to where a correspondent customer of a city bank gets the benefit of some of this activity that I am attempting to describe that encircles the central metropolitan area where you have a natural base for so many functions of business.

But there are a number of companies always that en-

circle, particularly with their manufacturing facilities. And to some degree, depending on raw material availability, [fol. 2068] riverbank locations, this sort of thing, the environs of these metropolitan areas; and the bank that doesn't get in the arena in competing for this correspondent bank business is going to be at a very distinct disadvantage.

A bank that doesn't get into it is going to have a very hard time becoming a real important competitor in the total market, in my opinion.

Q. Mr. Buttrey, you have indicated that the creation of money function is unique but essentially noncompetitive as between two banks.

What is the raw material of banking?

A. Well, the basic commodity that they deal with is money and credit. They do lots of other things, all of which are designed in my judgment to aid and abet the development of their basic business in the service areas.

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[fols. 2069-2073] Q. Is the ability of a bank to obtain a growth in deposits the most important measuring stick when you are assessing the success of that bank?

A. No, it isn't. It's first always, and it's bringing the corn to the mill, and then you work on it from there, but by far the most important part of commercial banking is the way it uses the money when it gets there, what they do with it.

Money employed with imagination to the extent it is possible to keep all of their funds busy in areas that will create employment, create new wealth, that itself will produce more earnings for the area, is where the dedication and professionalism of the business comes in.

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[fol. 2074] Beyond corporate treasurers reducing balances to a minimum, and once they learn how to do these things, the commercial banks in the future will never be the intermediary again that they were before.

Instead of the corporate treasurer's balances that are [fol. 2075] going to be used in ten days or a week or

two weeks or maybe a few months, staying on deposit in the bank and then the bank buying treasury bills or commercial paper, the corporate treasuries are buying them direct.

Another important influence that is tied into this is the balance of payment deficit where over a period of a relatively few years, large balances of foreign central banks were built up in this country that added an awful lot to the interest-bearing deposits of the banking system, and in 1962, we had a fairly sharp decline in stock prices in May, and it happened to hit at a time when there seemed to be an abatement in the concern over inflation, and we had a pretty good sized movement out of equities into commercial bank time deposits and I think from June of '62 to '63, it will show an unusual move in time deposits of the banking system.

In other words, an awful lot more in dynamism and the bank that doesn't keep up with the times has problems.

Back to the question, if a bank has vitality, they can compete in any market, but the small bank or the medium-sized bank that can't staff itself or won't staff itself to where it can compete in a highly competitive market, I question whether or not it can contribute a great deal to economic development, and it certainly is not in the interest of the general welfare to retard the aggressiveness of other institutions in order to take care of one that isn't so.

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[fol. 2076] Q. Now can you assess, from your experience, can you assess the needs of this area for capital?

A. Well, I have felt for many, many years, and it's an absolute fact of life, that we are importers of capital have been for an awful long time, and will be for a long time yet, even though we have made tremendous progress in the southeast in this area, we need to make an awful lot more.

In April of '60, as I said earlier, I came with the Crescent Company, and the first several weeks I spent on nothing but—time on nothing but asset familiarization and some general overall study, and then later after we had made two investments in Alabama, north Alabama, and were considering expanding both of them, one of

them substantially, I did some more studying on that area.

One of the things that I recall is that of the one hun- [fols. 2077-2080] dred largest industrial corporations listed in Fortune Magazine, fourteen of them were operating in a close proximity to where the bank and the insurance company that we were already interested in and planning to go further in were located.

There isn't a bank anywhere in the 6th Federal Reserve District that can have even a slight chance of becoming the principal bank for any one of those large corporations.

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[fol. 2081] A. The high is on Superior Oil Company, and the investment per job is $176,456. The lowest of the ten is Schenley Industries, where the investment per job is $89,751.

The average of the 100 largest manufacturing companies in 1963—and these are the latest figures that National City would turn loose; they considered that they had not done enough research on either 1964 or '65; and they do, as he expressed it, a thorough job every few years. So in 1963 the manufacturing companies' average was $24,500, up from $12,200 in 1949, or doubled in a fourteen-year period.

The average of the 100 non-financial, non-manufacturing companies was $30,300, up from $16,600 in 1950. The $30,300 figure was a 1960 figure, and they are in the process of doing some work on that now, and guess that it is substantially high.

The Superior Oil Company's figures and several of [fols. 2082-2088] the highest ones in here are companies that happen to be in areas where there has been rapid technological progress and so on; and some of these are located in our section of the country.

But I say again that capital requirements for the economic development and capitalizing on the natural advantages of our climate, our people and our natural resources in the South, we must be importers of capital for a long time yet and need larger financial institutions all the time.

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[fol. 2089] Now, to the extent that local financial institutions can keep deposits of the region in the region, increasing their capacity to take care of the needs here, the more of the needs that can be taken care of locally the better. And the more that the local financial institutions can do to take care of these needs as the lead bank —and by that I mean becoming the principal commercial bank relationship of that large Southeastern borrower and sell interest in that credit to other institutions—is a whole lot better way to meet the need, because you are that much closer to the scene.

Let me emphasize that the question has two parts. One is deposits, and one is loans. You can't separate them. But to the extent that the Southeast doesn't strain, and this immediate area doesn't strain, every muscle—and we are so fortunate here in Nashville to have a financial center, the second largest—I am not talking now just about commercial banks, but the second largest investment banking house in the nation is headquartered here.

It started with a $50,000 investment in either 1929 or 1930. I have been an adult for most of its progress. It is second only to Merrill, Lynch, Pierce, Fenner and Smith in terms of invested capital.

Another of the large ones of the nation—let me start [fol. 2090] another way. There are thirty-five investment banking houses in the nation that have invested capital of ten million dollars or more. Four of them are in the Southern United States. Two of those four are headquartered in Nashville. We have about twenty investment houses running all the way from the second largest in the nation to the one-man shop.

We also have headquartered in Nashville two very large life insurance companies. Of the fifty largest life insurance companies in the nation, from Best and Company's report—which is the statistical agency that reports on life insurance companies—from the fifty largest, we have three of them in Tennessee.

There is only one other state in the entire South that has three, and that's Texas. And if you take out the seven that's in New York, the five that's in Connecticut, the four that's in Illinois, and the four that's in Massachusetts, then you have got about thirty life companies—well, it is

exactly thirty; you have got thirty life companies left in the nation of the largest fifty to be spread between forty-six states, and Tennessee has three of them.

This is a financial market—has been for a long time.

Q. How many of those life insurance companies are in Nashville?

A. Two of the three.

[fols. 2091-2093] Q. Do any anti-competitive effects spring from the lack of institutions not large enough to meet the needs of single borrowers?

A. State that again?

Q. Do any anti-competitive efforts spring from the lack of institutions large enough to handle the entire needs of single borrowers?

A. Well, you have this——

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[fol. 2094] The Witness: I understand now what the question is. It simply means this, and I know of a paper manufacturer just recently, have personal knowledge of it as a result of being the investment officer for the insurance company, that has gotten to the point that there isn't a commercial bank in this area large enough to handle their needs.

[fol. 2095] Just recently a Nashville bank and a bank in another city that they compete with for the most desirable business in the whole area got together to work out the credit.

Now one effect of this sort of cooperation can be that you can find out that the guy that you thought was such an SOB all of these years is really not, and to that extent, it can have some softening effect or lessening effect of the competitive environment.

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[fol. 2096] The Witness: First of all, let me say, making unsound loans eventually means liquidization of a bank, or any other lending institution, and the greatest dis-[fol. 2097] service that any commercial bank and its lending officers can do to a borrower is to carry them beyond the bounds of reasonable safety and get them into real trouble.

The implication to the effect that the Nashville Bank and Trust Company might make loans that the other banks wouldn't make, I just don't believe is so for the simple reason that they just don't have anything like the depth of know-how in extending credit and in providing management and financial counselling and guidance to the borrower that needs it, and I don't believe that Nashville Bank and Trust Company ever availed themselves of an unusual service that's available in Nashville, that I don't believe is available anywhere else in the country, again tied to this financial center and the two large banks here, to my personal knowledge, have used them for a long, long time, since the depression of the thirties.

In the coming out of the depression of the thirties, Equitable Securities Corporation organized a business management and counselling department under the guidance of a Mr. George Hearn, and a Mr. J. C. Schutt and they worked together for, oh, three or four decades in this particular activity.

A few years ago, Mr. Hearn reached mandatory re- [fols. 2098-2099] tirement age, went in business for himself outside of Equitable. Mr. Schutt continued until his mandatory retirement age, and then took over the department from Equitable, and now operates it as a proprietorship or his own business—may be a corporation, I don't know about that—as his own business, which he has been doing for a short while.

This financial service and management service has helped to save, I'm sure, fifty or more companies in this area that otherwise couldn't have been saved, because it gave them something they didn't have on their own to the extent that your aggressive banks with depth of know-how, the ability to dream and to conceive ways and means of making a sound credit out of an otherwise marginal credit, with the aid of this special organization, were able to make loans that would have gotten a bank that wasn't willing to use this services or didn't avail themselves of the services to—well, they just couldn't get away with it.

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[fol. 2100] Q. Will you give your own opinion, Mr. Buttrey, as to the cost, if any, of demand deposits, in relation to savings?

A. Well, of course, you—the individual banks have their own situation, but up until rates went above about three [fols. 2101-2103] per cent, the—in the average institution, I think, within the system, that demand deposits were more expensive than savings deposits, and a basic for this opinion is some work that was done both by the Kansas Bankers Association, which was later adopted by the American Bankers Association.

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[fol. 2104] Q. Mr. Buttrey, can you define savings for us?

A. Yes, I can define savings for you. There are a lot of different conceptions about what savings are. My wife seems to think of savings in terms of buying a $2,000 fur coat for $1500, and saving $500 just like that. Our American salesmen cause people to save a few dollars a month bus fare by making $150 a month car payments.

We save on the ice bill by buying an expensive refrigerator; on the food bill by having a home freezer; on entertainment by buying a television. And we do have some young couples save themselves right into bankruptcy.

But savings to me overall for the saver, whether it is an individual, a partnership, a corporation, a business entity, a government unit—whatever it is—is the change in net assets for a given period of time, provided those assets in the increase can make an economic contribution to the objectives of the entity, whatever those objectives might be.

When a bank competes for savings, they are competing for what I call a savings dollar. And I am not there necessarily talking about money invested in capital equipment that is pure savings.

Savings have been described as everything other than [fol. 2105] consumption. Personally I like the other definition of savings best. The change in net assets from beginning to end of a given period.

Q. You stated the banks compete for the savings dollar. Do any other institutions compete for the savings dollar?

A. A lot of them do.

Q. Which ones?

A. A lot of them do. In this area you have very aggres-

sive savings and loans associations. The assets of our savings and loan associations in 1945 was 8.7 million dollar in Nashville. Excuse me, I am mixing up local and national. I can't read my own notes.

In 1945 Nashville had 12.9 million dollars of assets in its savings and loan associations. At the end of 1965, $270 million—a fantastic growth. The industry as a whole has had unusual growth from 8.7 billion dollars to 129.5 billion dollars in the twenty-year period.

The life insurance companies have grown in that twenty-year period from $44.8 billion to $159.6 billion, and these two types of savings institutions are the largest besides commercial banking and have a substantially faster rate of growth in the past.

I think over recent years, with Regulation Q setting the ceiling on rates that commercial banks can pay, that that gap has been narrowed and we may just see the com- [fol. 2106] mercial banks outperform them as far as growth is concerned over the near term.

But a relative comparison of their size with the banking system, the banking system savings at the end of 1965, $151.2 billion against $129.5 billion for the savings and loan associations, and the $159.6 billion for the life insurance industry.

In other words, the life insurance industry is a little larger now than the commercial banking system. But they are all after the same dollar and the same markets, and we are fortunate in Nashville again to have very aggressive savings and loan associations in Nashville and its surrounding areas and the very large life insurance companies.

A life insurance company now doesn't pay the saver interest. They provide protection in lieu of interest; and on the normal life insurance policy there is some net cost for the protection in that the accumulating cash value on the ordinary life policy over a period of time generally —of course depending on the age of the policyholder more than any other consideration—doesn't hardly offset the total premiums paid; but is protection in lieu of interest.

If the life insurance industry ever really perfected their so unique advantage in going after the savings dollars

they would be an awful lot tougher competitor than they are now, because a 25-year old father for $10 a month [fol. 2107] can buy an awful lot of protection and have his money, too. And the little interest he is going to get from any other savings institution is not going to help his family budget very much.

But, even though they have an awful lot of savings, they really haven't sold their unique advantage as well as they could have.

Take just a little company like ours. Our assets went up $4 million this year and our surplus increased approximately half a million dollars. For all practical purposes—of course you have got some fluctuation in the other assets and liabilities accounts—but for all practical purposes that difference of $3.5 million is pure savings and liquid savings that belongs to the policyholders.

These are the large ones. The credit unions are becoming an effective competitor for this savings dollar, and the best actual figure I could get in Davidson County was at the end of 1964 from the State Department that supervises them in this state. That was $33 million. But an estimate at the end of 1965 is $35 million.

In Tennessee as a whole, $162 million; and in the nation, as some measure of this group of savings institution's accomplishments in the nation, $7,473,000,000. Here is the fastest rate of growth in any area of savings, and that's up from $102 million to the rough $7.5 billion in a fifteen-year period of time.

[fols. 2108-2109] Of course the investment bankers that I mentioned earlier have made Nashville "Little Wall Street" all around this country. Sometimes when the New York houses meet Equitable and Bradford in competition, they wonder whether or not it is "Little" Wall Street.

But they are very much in this market for the savings dollar that the bank competes for. In selling equities of all kinds, the sale of mutual funds has been unusually successful around the country and in this area; and of course they also sell debt instruments of all kinds.

You can buy a top-grade credit behind a municipal bond today of some of the special types at a yield of better than four percent that is tax-exempt. So debt instruments

are a very important factor in this competition for savings deposits.

With our concentration of investment banking houses here, they are very important. I believe that pretty well covers it.

There are some other minor ones, but that's the big picture.

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[fol. 2110] Q. Do other institutions compete with banks in the making of loans?

A. Very much so, and more so with the passage of time. I mentioned earlier the innovation of these corporate treasurers. The financial officers of a lot of these institutions haven't only learned a lot in the area of working their own cash balances; they have learned a lot in other areas as well. In fact, they have taught the banking system a lot.

In this area you have got, well, three major areas of competition. One is the competition for what is known as private placement corporate loans; and the commercial paper market, that's corporate lending. You have got real estate lending that can be everything from the individual on through. And you have consumer lending.

The life insurance industry has made a great deal of change over a short period of time. One of the pioneers in [fol. 2111] unsecured, partially secured, and secured corporate lending from the life insurance companies has been Prudential Insurance Company of America. The man that is now head of their commercial and industrial loan department in their head office in Newark was the manager of the industrial and loan division of the Southeast in their Southeastern home office in Jacksonville, Florida, all the time I was president of the bank in the building.

I say this purely to say we exchange information from time to time. I have knowledge that Prudential now has over $900 million in private placement corporate loans, and this private placement loans that are negotiated either directly with the borrower or through an intermediary as a commercial bank or an investment bank or a loan broker to a company that in practically every case does not have general market funds available to them through

an underwriter. That is what a private placement loan is.

Now when I say in practically every case, I want to give you one example on that. Around 1950, when the Chrysler Corporation had some difficulties, the Prudential loaned them $250 million on a term credit as a private placement loan.

It wasn't at that time a credit that would have met with wide acceptance in our investment markets, but what it could have cost them a great deal more money in my [fol. 2112] opinion to have gone the route of a corporate bond issue underwriting as against a private placement loan.

Now, that financed "The Forward Look" that we all heard a lot about in the Chrysler Corporation, and we are so fortunate in this country to have institutions that are large enough that they can handle that kind of credit.

But, for the most part, and for all practical purposes, all of the money that is put in these private placement loans is going to companies that aren't yet far enough along to use general market funds.

Of the $900 million that I mentioned, these are all companies below a certain size. In the Prudential, if they are above a certain size company, they go into another classification. Of this $900 million, over $100 million of them are in the Southeast, with their offices that service those loans being in Atlanta and in the South Central Home Office in Jacksonville.

One of the banks in Nashville recently hired one of their term credit men and brought him in as a vice-president, who, for some years, had worked in this division.

There is a pioneer in this area among the life companies in the South—Gulf Life of Jacksonville, Florida—which has done a very good job in this area and is growing all the time. So there is a very wide area of competition for the most desirable loans for the medium-sized [fol. 2113] companies in the area. And yet they work together, too.

It isn't at all unusual for the commercial banks or a commercial bank and a life insurance company to participate in the same credit.

In fact, one of our companies, our Birmingham manufacturing company, had a $750,000 term loan where one

of the Birmingham banks took the first four parts and Gulf Life of Jacksonville, Florida, took the other eight.

There are several of the life companies in this area that are competing for this type of loan. On the commercial paper notes, this market has grown in fifteen years from around $1.25 billion to $1.5 billion, to where at the end of 1965 there was 10.6 billion dollars outstanding; and the reporting member banks of the Federal Reserve System—and that's from 107 cities now that make weekly reports to the Federal Reserve System on their loan totals, and it is a large segment of the banking system to help them keep up with what is going on—but in the middle of the first week of March or April—anyhow, just within the last few weeks—the reporting member banks combined had $52.6 billion.

So they have gone from a relatively insignificant part of the commercial loans of the country to better than twenty percent, and there has been two developments in there that are rather interesting.

One is that the investment bankers that did such a fine [fol. 2114] job of selling commercial paper or short-term unsecured notes of successful corporations direct to the man that had some money, instead of commercial banks getting to be the intermediary, also got bypassed as a large part of these commercial notes or short-term unsecured notes of our important borrowers and are now being sold directly by the financial officer of the institution which has further intensified competition in that general area.

In the savings and loan associations in competition for loans, you are talking of term real estate loans and for home improvement loans; and again we are very fortunate to have aggressive savings and loan associations. [fol. 2115] In years gone by, when I lost a little business to them, I felt they were kind of unnecessary, but they have served a very fine function and have helped to keep everybody in fighting trim in these markets. They have done a good job.

And for the consumer loans, the credit unions are becoming a more important factor all the time, loans of around seven billion dollars, and they are fairly good

sized in this area, as I mentioned there a little earlier in indicating their size.

The small loan companies or industrial finance companies, as they are often times called, are much larger than you would think, and they have a whole lot better credit risk on their books than you would guess an awful lot of times because—well, I say because, at least one of the reasons why is I think they have done a pretty good job of merchandizing. They make it sound so nice to come in and borrow money.

Davidson County loans outstanding at the end of the year was 36.9 million dollars or a sizeable amount of loans. The industry as a whole, at the end of the year had 5.6 billion dollars in loans outstanding.

The sales finance companies, a broader area of competition, and that industry has a sizeable amount of loans excluding what we call commercial finance company loans or factoring or accounts receivable financing and capital [fols. 2116-2120] loans. Just strictly the sales finance business companies—well, largely automobile financing, there's over sixteen billion dollars there, and in Nashville, all of the major companies are here. We have also some very aggressive local companies with a prime example being Associates Capital Corporation which I mentioned a little earlier.

And then there are innovations being made all the time in better ways to finance the small businessman's receivables and inventories for him on the part of the factoring and the commercial finance companies such as Talcott, Heller and Company, and so on, and again we have a case where the various classes of financial institutions compete for the same business, but where they also cooperate.

It's not at all unusual to have an aggressive commercial bank and one of your fine commercial finance companies jointly and maybe even an insurance company in the package with them helping to take care of the customer's credit need when, if we had the very large financial institution, maybe one institution could do it all.

In fact, just recently, our small insurance company, Associates Capital and a commercial bank combined to handle a little company in Hickman County, Tennessee,

that neither one of us was large enough to handle by themselves.

*   *   *   *   *   *   *

[fols. 2121-2122] Q. Mr. Buttrey, is there a basic difference between trust assets, whether you use book or market value, and commercial bank assets?

A. Oh, there's a tremendous difference.

Q. What is it?

A. Well, on your trust assets, in some cases—well, first of all, the trust business is acting for others. You are carrying out a specific assignment for somebody else. You are settling an estate, you are administering a trust of some kind, or you are performing as agent under some sort of an agency agreement.

They run all the way from complete management responsibility in a broadly-drawn agreement, whether it was made by a testator or whether it is made by a living person, that would give authority controlled only by the so-called prudent man rule, where you are charged with professional performance, down to nothing but custodian responsibilities.

[fol. 2123] I left out guardianships. In this section of the country, agency agreements, guardianships, and things of that nature that generally are money losers, make up a whole lot of the trust business.

Q. Who derives the income from the trust assets?

A. The beneficiaries, of course.

Q. And what is the income to a bank in a trust department?

A. It's a service fee and they have minimums.

I know I stopped in, thinking you all were going to use me yesterday, and heard the president of the bank in Birmingham say that he didn't have any trust business out of Nashville. They are the trustee under our collateral trust agreement under a piece of financing for us and I believe they charge us a hundred dollars a year.

Well, that involves seven hundred fifty thousand dollars. Seven hundred fifty thousand dollars sounds great, but they can't possibly recover the cost on it, but we are depositors of the bank and generally the trust business throughout the country is a service arm that's badly

needed, needs to grow and develop, needs to expand for the needs of everybody, but it's not a money maker.

* * * * * * *

[fol. 2124] Q. Now in your opinion, what is the most essential ingredient to the successful operation of a bank?

A. Management.

* * * * * * *

[fol. 2125] Q. Referring to those exhibits, sir, will you comment as to your opinion of the management situation at Nashville Bank and Trust Company?

A. Well, they had serious problems obviously, and you don't have to look at these charts to know that, because of what they have been able to do in this market over a long period of time with the rich, long history of the institution identified with some of the finest families that ever existed in the state.

They just should have done an awful lot more than they have done. The biggest single thing that is obvious [fol. 2126] on here is the age of the group as a whole, but deeper than that, it seems to me that I'm in the position here of kind of paying a backhanded compliment to Mr. Hill and his Board of Directors, and the management of the bank.

There isn't a finer man anywhere than Mr. Hill. In fact, one of the things that I have thought for a long time, and going back certainly to August of 1954, when a member of the state banking department approached me about whether or not they could talk with Mr. Hill about the possibility of me going with the bank instead of going to Florida at the time Mr. McNeilly was head of the bank, and I think a part of the reasons why the Nashville Bank and Trust Company hasn't capitalized on its opportunities and its potential is because Mr. Hill is too nice a guy and not mean enough maybe, if that's the kind of an awkward way to say it, but that's the way I feel about it, to bang heads together, to spell out objectives, to set quotas, to look key people in management right in the eyes and say this is what I expect, and I love you and all of that, but if you don't perform we aren't going to be associates any more.

[fol. 2127] I don't think Mr. Hill was that kind of an individual. And the bank's management didn't have that kind of capacity. Mr. Hackworth made substantial improvement in the institution's image for a while, but it wasn't capitalized on.

It wasn't capitalized on in my judgment for two or three reasons—one of the important ones being that they didn't have competent lending know-how and the aggressiveness to compete in a highly competitive market.

Had they brought in from, we will say, one of your fine banks in any one of our really competitive metropolitan markets such as Atlanta, Memphis or Dallas, a very top credit man at the time Mr. Hackworth came into the bank, and had they sat down as a group and said, "Boys, we are going to get in this business and we are going to spend the money to do it," and brought their own salary structure into keeping with what it should have been, and had a little prayer meeting with everybody collectively and individually, and spelled out what was expected of them in very clear terms which couldn't possibly have been misunderstood, I really think that the move and the tremendous short-term improvement that Mr. Hackworth was able to bring about would have meant a great deal to this whole area.

Q. You commented upon the increase in salaries to be in line. Defendants' Exhibit 44 lists the salaries of offi- [fols. 2128-2129] cers of that bank as of January 1, 1964. Do you have knowledge of salary scales of comparably-sized banks in the Southeast?

A. One of the ways that you, as the executive head of a bank, know in your own conscience that you are treating your people right—and I have always followed the theory of paying your people better than the competition is paying and expecting more out of them and not hesitating to spell out what you expect, because I think it gets results.

The salaries are just low; very low.

*   *   *   *   *   *   *

[fols. 2130-2132] By Mr. O'Malley:

Q. Referring you to Defendants' Exhibit 15, Mr. Buttrey, I ask you to note the resignations, deaths and retirements of Nashville Bank and Trust Company officers

since January 1, 1964. I ask you whether, in your opinion, management was or is available to replace those individuals or those whose age indicated early replacement would be required at the time of the merger.

* * * * * * *

[fol. 2133] Then they had next to an impossible task this late in the game to have properly staffed the bank, to staff the bank to the extent that they could have done much with it.

Q. Mr. Buttrey, there is testimony in the record from Mr. Benedict, the president of First American National, that he met Nashville Bank and Trust Company in competition.

Mr. Fleming of the Third National stated that Nashville Bank and Trust Company was a good customer with whom Third National did not compete; and further, that a small bank can compete more aggressively with a large bank than a large bank can compete with a smaller one.

Will you comment upon these statements, please?

Mr. Minicus: I think they should be taken one at a time, Your Honor. I don't believe he can follow the question, much less try to tell how the answer is going to come out.

Mr. O'Malley: These are apparently contradictory statements.

The Witness: I know what all three of them mean. I have lived with them.

[fol. 2134] The Court: Take them up seriatim.

A. I will take them up one at a time. I will take the easiest one first. A small bank that is a correspondent customer of a larger bank—it doesn't make any difference what the relative sizes are, just so there is an important customer relationship—the small bank is in the position to be about as bold as they want to be in going after the customers of the other bank.

In this specific instance, with the smaller bank having probably what was the largest correspondent relationship in the bank—I don't know whether this is so, but I would guess if it wasn't, it was close to it—but balances of several million dollars, you can be as bold as you want to be in

going after their customers; and you certainly don't have to apologize for it.

That's one of the fine things about this correspondent banking system. You have just got all kinds of built-in things to invite you to work. Whether you are willing to or not is something else.

On the other two questions, I won't attempt to say what was on either of their minds at the time they answered those questions because I don't know. But I know them both and have for a long time.

Benedict was my first boss when I went in the banking business and was for some little time. He hired my [fol. 2135] wife into the banking business—he's one of my favorite people. I think both of their answers assume an understanding of this business that doesn't exist generally.

So I am going to comment on what their answers mean to me.

Benedict was saying: "Sure, we call on their customers all the time. But it's the type of call that I describe as a courtesy call. You have got a situation where you have got to take away from them over ten percent of their business"—I am talking about the small bank now—"to be even."

This is a pretty hard economic fact. But you don't know what the future holds. You don't know that your relationship with that depositing bank will continue forever. You don't know that that customer of your correspondent customer will continue to do business there forever. So you want a contact with them. You want to continue a relationship with them.

You want to enjoy their confidence, and you do call on them.

I have made a lot of that kind of calls. You talk about the weather and a lot of other things and maybe by the time you leave, if you make a pitch for some business at all, it's along the lines, "Well, your bank is a fine customer of ours, great friends. If the time ever comes when [fol. 2136] we can be helpful to you all, let us know."

Now, on the other hand, when Mr. Fleming said that you don't compete with a good customer, you have got still another factor involved, and that's the ethics of

the banking business that is involved within banking. In an awful lot of cases there's a mutual understanding that the large bank that enjoys the correspondent customer and the correspondent customer will compete right down the line.

In fact, when we opened in Jacksonville we had to have, we thought, a principal account relationship in Jacksonville because of the local clearing house and because we weren't in the position without adding expense we couldn't carry to go right into the Federal Reserve System.

We had a clear understanding with that bank that no holds barred anywhere. We were going after every customer of yours we can, and you take anything back from us that you can later.

But normally a bank that is specializing and competing aggressively and effectively in the correspondent bank business can do a better job by working through the correspondent bank customer that's closest to the situation. It is a question of cooperation.

A further point on the ethics that ties into this thing is that some banks have several correspondent bank customers in the same markets. And, generally, whichever [fols. 2137-2138] one of those customers comes to them first with a request to help with a specific piece of business is the one that they work with. They don't put themselves in the position of helping two banks compete for the same piece of business at the same time.

So what Fleming was saying was: "To us, Nashville Bank and Trust Company was an important correspondent banks customer and we worked with them every time we had a chance."

By Mr. O'Malley:

Q. Based upon your knowledge, your own personal knowledge, of the operations of Nashville Bank and Trust, Mr. Buttrey, and your knowledge of the competition that exists both for savings and in the making of loans, can you state whether or not in your opinion Nashville Bank and Trust Company was a major or significant competitive factor in Tennessee?

A. No, it was not.

Q. Was it in Davidson County?

A. No, it was not.

Q. Was it in Nashville proper?

A. Well, I tend to think of Davidson County and Nashville as being the same. And one of the reasons why I say that, we do business with quite a number of banks. We have two principal bank connections here and a principal bank connection in Birmingham.

* * * * * * * *

[fol. 2139] Mr. O'Malley: This is not a conclusion of law, Your Honor. This is a question asking him whether or not he believes in his opinion that, as a result of the increased concentration in commercial banking assets in the hands of the three larger banks in this city, whether as a result of that competition was substantially lessened in Nashville or whether he believes that it probably would be.

That is not a conclusion of law.

The Court: Of course it is a conclusion of law in that it is the ultimate question which the Court will have to determine, isn't it?

[fol. 2140] Mr. O'Malley: Yes, but—

The Court: But at the same time I think an expert can testify as to his opinion about it. I am not bound by the opinion.

A. My opinion is quite to the contrary. Competition has been intensified and substantially so. And here are the reasons that I think so.

There hasn't been a single bank officer who has left town that I know of. The assets haven't gone out of town. They are all still here in this market. Mr. Primm, who went to First American, has an awful lot more to offer the people that he is calling on than he had before.

And the same is true of all of the others over at Third National Bank. All of them—Mr. Primm and the balance of them—are now in with the management team that will look them in the eyes and get them to work, or run them off.

Beyond that, I worked with this fine group of people down at American for sometime, and I have done business with them most of the time since I have worked there.

In fact, our company at one time owned several of their branch offices.

With the conversion of assets and what not, I don't believe we have but two left at the moment. Commerce Union pays us rent on their Gallatin location, too. I have always wished they would get a day behind so I could [fol. 2141] go down there and render them a bill, so I would have some fun out of them. But they pay well.

What I am saying is, I know they are going to strain every muscle and break the backs of their people to keep Third National Bank in Nashville from becoming the largest bank in this city. By the same token, the Third National crowd is going to be in there trying to do it, and this is good for the general welfare.

Now, if they get lazy, just a little bit lazy, there is just as much leadership in this community as there is in Birmingham. If they start dragging their feet and they aren't serving the public, they aren't doing the job, we will have some new banks, and I may just organize one.

But I wouldn't do it today, and there ain't nobody else willing to do it today. I will bet there hasn't been a charter application for a new bank in Nashville since Capital City opened, not even an application, and you couldn't put together in my opinion the leadership needed for a new board of directors in Nashville because of our competitive environment.

And the community is better off for it. It isn't altogether the commercial banking interest that is providing this competition. It is the other knowledgeable large successful aggressive financial interest as well.

* * * * * * *

[fol. 2142] Q. Have you observed any benefits to Nashville which flowed from this merger?

A. Well, I don't know that I have observed any particular instance and so on, but I can express an opinion on it, and that is that where Nashville Bank and Trust completely defaulted in putting their people and their assets in the very important correspondent banking market, that is not only important to the economic development of the area, but puts them in a position to compete with the very desirable business, where the manufacturing lo-

cations and other functions encircle Nashville, and central functions are in Nashville, there's no question in my mind that those assets are in that market now, and so are the people.

And where, as I walked back to where I used to park my car when I was going to night law school, I never saw an officer of the Nashville Bank and Trust Company going out with an armful of papers under his arm at night, at 9:45 to 10:15 at night, well, particularly back when the 3rd was small, not a big bank, and I always thought they had the most of them there because Mr. Farris was there, when I walked by there going to the parking lot, I have seen [fols. 2143-2169] as many as a dozen of them coming out, but Mr. Farris was always in the bunch, and the fact of the matter is that these assets and these bank officers are going to be worked after this merger and they weren't worked before in my judgment.

* * * * * * *

[fol. 2170] Cross-Examination.

By Mr. Minicus:

Q. You testified yesterday, because of some retirements, some deaths, within the Nashville Bank and Trust Company that it would have been almost impossible for them to rehabilitate their bank because of the shortage of managerial personnel.

Will you explain to us how in 1955 you were able to take a bank with no nucleus at all and completely supply it with a complete managerial staff?

A. Well, yes, I can, because we weren't loaded down [fols. 2171-2181] with an abnormally high amount of frozen assets in the form of real estate loans; and a bank that has management that is not aggressive and determined, as was the case with the Nashville Bank and Trust Company, you also have an abnormal amount of loans classified as either substandard or doubtful or probably loss. You have past-due problems. You have just many, many, many things to drain off time and energy that can't be directed to building.

So much of your time goes to the defensive side instead of the offensive effort of building and developing.

Another very, very important reason is that in the old bank you have employees with great length of service. It is hard to bring people in over them at substantially higher salaries without also adjusting their salaries. It is just more difficult in my judgment to find talent with the right kind of determination and motivation to inspire and to lead people with enthusiasm that is infectious enough to permeate the organization to take an old situation and try to rehabilitate it, than it is to start a new one.

* * * * * * *

[fol. 2182] Q. Where did you get your information on substandard loans at the Nashville Bank and Trust Company, Mr. Buttrey?

A. Well, I wouldn't have had the information to know it, because again I have lived in this business, and where there is timidity on the front side in extending credit; there's just as much timidity and maybe more on facing up to a deteriorating situation, and the individual that can't make up his mind what to do with a loan application and wears it out trying to make up his mind what to do will not be the aggressive individual that will say today is the day to face up to the fact that we have got a deteriora- [fol. 2183] tion in this loan situation and face it and in general that means that a bank is going to have more than a normal amount of classified loans and you don't have to know the details, they are there. It is a part and parcel of that type of management. I've looked at too many of them.

Q. And are you acquainted with the charges by the Nashville Bank and Trust Company against reserves for loan losses?

A. I am not, but I don't want to be misunderstood in this area. A loss and a frozen asset that can't serve the community and can't help provide the vitality and velocity of our money system is what I'm talking about.

I'm not talking about an actual loss. I'm talking about frozen assets, classified assets, slow assets that can't turn and serve the function that commercial banking is supposed to serve. They are two subjects, Mr. Minicus.

Q. I'll look for a little comparative on that one, Mr. Buttrey.

I presume when you are speaking about loans on frozen assets, you are speaking about——

A. Sir, not loans on frozen assets; the loan itself may be the frozen asset.

Q. I see. Because of long, far-distant maturity date?

A. No, the maturity date has nothing to do with it. [fol. 2184] If you've got a thirty-day note that he can't pay, renew it thirty days at a time for four years, it is a frozen asset.

Q. Even though it's not a loss?

A. Yes, sir.

Q. It does pay interest during that period, doesn't it, sir?

A. That's still another subject, whether or not it pays interest. The point I make is a basic function of a commercial bank was not being served in an acceptable, satisfactory manner in my judgment by the Nashville Bank and Trust Company, because they weren't working their assets.

Q. Well then, how was it if they weren't working their assets they pretty regularly returned earnings after taxes in excess of $22.00 per share?

A. Well, there's a very simple answer to that.

Q. I'm sure there is.

A. Their earnings have been squeezed out of their overhead for as long as I can remember. They had an underpaid staff; they have been behind in the times in many other areas, and there was a time when banking—some banks in the system could get away with that sort of thing, but it isn't so today.

Q. You say their staff was underpaid?

A. Yes, sir.

Q. In relation to what?

A. To a decent living wage for the responsibility they [fols. 2185-2215] should have been carrying or have been replaced..

Q. In relation to salaries paid by other banks of like size in the city.

A. Well, there were no other banks of a like size in the city, and size has something to do with it, but not a great deal.

* * * * * * *

[fol. 2216] Q. You testified yesterday that the fact that Nashville Bank and Trust Company was a correspondent customer of the First American Bank and maintained a large balance in Third—that this foreclosed them from being competitors of First and Third. Is that correct?

A. No. I told you the kind of calls they make; that they make courtesy calls and they keep their contacts to where if a customer of that excellent correspondent bank customer becomes disenchanted with the Nashville Bank and Trust Company—and they are going to make a change anyway—that First American or Third National or Commerce Union got a shot at them. And they were good [fols. 2217-2261] customers of all three of these banks.

Q. Then it is your position that these accounts resulted in a softening of competition? Is that it?

A. Substantially so.

Q. Would you rather make it more definite? Just what was the effect on competition of these accounts?

A. Very minimum.

Q. Oh, there wasn't much effect?

A. There was a very minimum of competition, in my judgment between the First American Bank and Nashville Bank and Trust Company for the customers of the Nashville Bank and Trust because they weren't going to run any risk in my judgment of losing what was probably their most important correspondent bank relationship.

To a lesser extent, with the balances the bank carried —that is, the Nashville Bank and Trust carried—with the other two large banks, they weren't out putting a headlock on the customers of the Nashville Bank and Trust and taking them to the mat trying to walk out with all their business—as they would do with any account of the other two large banks.

That would apply to any one of the three of them, even though in the Nashville market the Commerce Union hasn't been as aggressive as the other two banks, even though they are coming up in my opinion.

* * * * * * *

[fols. 2262-2296] The Court: I would like an explanation on this loan limit question, how the actual available credit was increased by this merger.

The Witness: The point I was making yesterday, Your Honor, is that the assets, the forty-odd million dollars of assets, will be worked and they will be turned as the assets of commercial banking systems should be——

The Court: You mean——

The Witness: I am talking in terms of assets, the employment of funds more than the lending limit. You won't have much change. The institution that was merged in had a lending limit, and the bank that was merged into it had a lending limit. If the customers go to both institutions, you had a higher lending limit than you do combined because of state regulations.

* * * * * * * *

[fol. 2297] Marvin Bryan, a witness called for and on behalf of the Defendant Banks, after first being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Farris:

Q. Mr. Bryan, state your address and your position, please, sir.

A. Marvin A. Bryan, Superintendent of Banks for the State of Tennessee; office, 103 State Office Building.

Q. How long have you been Superintendent of Banks for the State of Tennessee?

A. Eight years.

Q. Did you have banking experience prior to that time?

A. Yes, sir, I did.

Q. How many years?

A. Since 1927.

Q. Now, Mr. Bryan, just briefly, I believe the Superintendent of Banks of the State of Tennessee employs a number of bank examiners, and these examiners examine all of the state banks in Tennessee. Is that correct?

A. Correct.

Q. And about how many state banks do you examine?

[fol. 2298] A. We have 221 presently.

Q. Now, Mr. Bryan, I want to hand you two letters. I will take them one at a time. The first of these is marked for identification as Intervenor's Exhibit No. 8, and that is a letter addressed by you to Mr. W. A. Robson. Will you identify that exhibit?

A. Yes, sir. This letter was written to Mr. Robson at the time that he notified us of the merger, or rather the application for the merger. We have a reciprocal agreement between the Comptroller's Office and our office that we exchange information each time we receive an application and each time we give an approval.

When I received Mr. Robson's note of the application, I responded with this letter.

Mr. Farris: It is a brief letter, if Your Honor please.

By Mr. Farris:

Q. Will you read that letter into the record, please, Mr. Bryan?

A. (Reading)

"Mr. W. A. Robson
"Regional Comptroller of the Currency
"Eighth National Bank Region
"167 North Main Street
"Memphis, Tennessee

[fol. 2299] "Dear Mr. Robson:

"Your letter advising this office of application to merge the Third National Bank and the Nashville Bank & Trust Company, both of Nashville, Tennessee, under the name and charter of Third National Bank, has been received.

"An observation from this office is made, as the writer in the capacities of both banker and supervisor during the past thirty-five years feels that some enlightment on aspects might be of help in reaching the proper conclusion on factors under consideration.

"Nashville banking has been considered competitive over the years. The First American National Bank being the largest since the early thirties. The proposed merger could, in my opinion, increase competition as the consolidation would make the Third Na-

tional Bank nearer the size of the aforesaid largest bank.

"Facts remain that the survivor of the merging institutions will still remain in second place as to size and the elimination of a small competitor will not be too important.

Yours very truly,

/s/ M. A. Bryan."

[fol. 2300] Q. Now, Mr. Bryan, did that letter express your opinion at the time it was written?

A. Yes, sir, it did.

Q. Does that letter express your opinion today?

A. It does.

Q. If you were asked about all of those matters covered in the letter over again in detail, would you give the same opinion again at this time?

A. Yes, sir, I would.

Mr. Farris: Now, if the Court please, I move into evidence Intervenor's Exhibit No. 8, which is this letter from Mr. Bryan to Mr. Robson.

The Court: All right, let it be admitted, if there is no objection.

Mr. Minicus: No objection.

(Intervenor's Exhibit No. 8 was received in evidence.)

By Mr. Farris:

Q. Now, Mr. Bryan, I hand you another document identified as Defendants' Exhibit No. 7. This is a letter to Mr. D. W. Johnston. I will ask you if you recognize that?

A. Yes, sir, I do.

Q. Did you write that letter to Mr. Johnston?

A. Yes, sir, I did.

Q. At his request?

[fol. 2301] A. At his request, yes, sir.

Q. And it shows at the bottom that that was attached to the application to merge which the Third National Bank filed with the Comptroller, I believe. There is a note on the letter indicating that. Is that correct?

A. Yes, sir.

Q. Will you read that letter into evidence?

Mr. Weinbaum: Your Honor, it isn't necessary for Mr. Bryan to read these letters into the record, I don't believe.

Mr. Farris: They are very short, if the Court please.

The Court: Hasn't this letter been read before?

Mr. Farris: I don't recall that one. Now, the letter that the Plaintiff—the letter to Mr. Robson, I believe, is one of his exhibits; but I am not sure that was done. No, that was another letter. I don't remember that it has been.

The Court: You can let the court reporter copy it into the record. Treat it as being read.

Mr. Farris: There is one thing in it I wanted to question ~~him~~ about.

The Court: Oh, yes, you can question him about it.

[fol. 2302] (The letter is as follows:)

"Nashville, Tennessee
April 25th, 1964.

"Mr. D. W. Johnston, Chairman of the Board,
"Third National Bank
"Nashville, Tennessee

"Dear Mr. Johnston:

"Inasmuch as I am not vested with facts which relate to the proposed merger between Third National Bank and Nashville Bank & Trust Company, the aspects which are obvious as determined by observation during my six years as Superintendent of Banks will be expressed.

"The competitive factor in my opinion will not be lessened by the merger. This assumption is based on the evident competition which now and will exist between existing First American National Bank, largest Nashville bank, The Commerce Union Bank, in third position, and Third National Bank, second in size, the surviving institution of the merger between themselves and Nashville Bank & Trust Company which holds a minor position in the field insofar as competition is concerned.

"The factor which would favor the merger in my opinion to the greatest extent would be the added [fol. 2303] capacity to serve Greater Nashville and

adjoining area with efficiency and know how in the areas of operation being conducted by each, which joined can be much more effective.

Yours very truly,

/s/ M. A. Bryan."

"Stapled to page 95 of all copies of appli."

By Mr. Farris:

Q. Mr. Bryan, this letter starts off the first line stating this: "Inasmuch as I am not vested with the facts which relate to the proposed merger between Third National Bank and Nashville Bank & Trust Company"—and then you go on to discuss the matter in other detail.

What did you mean by the opening sentence that, "Inasmuch as I am not vested with the facts which relate" and so forth?

A. Mr. Farris, under the state law a state bank has the right of conversion to a national bank merging into a national bank without the consent of the Superintendent of Banks.

Of course, the right of conversation from a national bank to a state bank would require an investigation, and we usually always have a report of investigation made for branch banks for new charters and for mergers.

[fol. 2304] In this case we had no knowledge of the application to merge until we were notified by the Comptroller of the Currency, and the Comptroller did not furnish us any report on the regulation made by him. Consequently we did not have the facts, the immediate facts, in relation to the merger.

The only facts that I had, or the only notice that I had was the ones from the Comptroller and also from the discussion of Mr. Johnston of Third National Bank, so I did not have the facts relating to the merger.

Q. But did you have the facts with respect to Nashville Bank and Trust Company on account of examinations you made over a period of twelve years?

A. We do have, yes, sir; we did have.

Q. And those facts were on record in your office at the time this letter was written?

A. Yes, sir.

Q. Now, are the opinions expressed in this letter to Mr. Johnston which is Defendants' Exhibit 7—were they your opinions at the time the letter was written?

A. Yes, sir, they were. They were so stated verbally to Mr. Johnston, and Mr. Johnston asked me if I would care—if I did not care, he would appreciate it if I would put it in writing. I told him I would be glad to, and I wrote the letter on that basis.

Q. In other words, your first statement to him was [fols. 2305-2313] a voluntary statement. Is that correct?

A. Correct, yes.

Q. And then he asked if you would mind putting it in writing?

A. That is correct.

Q. Would you give the same opinion with respect to these matters as of the present time?

A. Yes, sir. I don't see any difference in the situation now and then.

*   *   *   *   *   *   *   *

[fol. 2314] J. C. Bradford, a witness called to testify by and in behalf of the defendant banks, after having first been duly sworn, was examined, and testified as follows:

Direct examination.

By Mr. Hooker:

*   *   *   *   *   *   *   *

Q. What is your present occupation?

A. I'm an investment banker.

Q. What is the name of your company?

A. J. C. Bradford and Company.

Q. What is the size of your company in terms of geographical location?

A. Well, we are one of the largest in this part of [fols. 2315-2320] the country, in the southern part of the country, I think.

Q. Do you or not have offices in other cities?

A. Yes, we have about twenty offices.

* * * * * * * *

[fol. 2321] Q. Have you borrowed in excess of the pre-merger loan limits from the Third National Bank since August of 1964?

A. Yes, we have.

Q. Why have you utilized the line of credit extended to you by the Third National Bank so extensively as opposed to the lines of credit available to you from other banks?

A: Because of that line of credit, the free line of credit that they have extended us.

Q. What relationship does the size of legal loan limits of banks have to the prospective growth of the community?

A. Well, I think it builds up the banks and attracts more business to the bank; and it also affords the business [fol. 2322] community an opportunity to engage in larger operations that opens a means of expansion.

Q. Is your firm engaged in the underwriting of municipal bonds?

A. Yes.

Q. State whether or not banks are also engaged in this line of activity.

A. A great many of them do.

Q. What other banks in Tennessee do this?

A. The Third and the First American Bank have municipal bond departments. They don't do a retail business. There are some like the First National Bank of Memphis that does a retail business.

Q. Would the effect on the growth of the community of the loan limit that you described be the same? Could the same effect be achieved by having a bank such as Nashville Bank and Trust Company with a portion of the set loan limit available for participations?

A. I wouldn't think so, because as a rule, in these local borrowings, firms have one bank and they go to them. They don't especially like to divide around and have loans in different places on the same prices.

Q. In other words, which is better—to have one bank

with a $2,400,000 loan limit, or two banks, one of which has $2,000,000 and one of which has, say, $1,500,000?

[fols. 2323-2324] A. Well, if you had $2,000,000 and $1,500,000, you have got available $3,500,000 against $2,400,000. I wouldn't know. With $1,500,000 available, that's a large enough limit to be some factor.

Q. Would that depend on its use?

A. I would think so.

Q. In your opinion as an investment banker and businessman, which lends a greater impetus to the growth of the community: One large loan limit, or two loan limits which might in the aggregate be larger, but neither of which is as large as the original loan limit?

A. I would think the larger loan limit, unless both of the others—if you had a small loan limit of a few hundred thousand dollars, I don't think that's a factor in the community anyhow.

Q. Which best serves the convenience and needs of its businessmen in your judgment?

A. I think that the bigger bank, if it is not a loan. In Nashville, for instance, the American and the Third both have large loan limits. So I think that's healthy for the community.

* * * * * * * *

[fols. 2325-2327] Cross-examination.

By Mr. McKenna:

Q. Do you think there is any one bank in Nashville now that could handle your borrowing?

A. Well, we borrow between the Third and the American. They both have sufficient limits to make the facilities that we can use.

Q. Do you ever use any New York banks?

A. We use them all the time.

Q. Chicago banks?

A. We use banks outside of New York as a rule only when we are able to get lower rates from them.

Q. So the bulk of your borrowing is done in New York? Is that correct?

A. The bulk of it is done in New York.

* * * * * * * *

[fol. 2328] Redirect examination.

By Mr. Hooker:

Q. With respect to the account you carried at Nashville Bank and Trust Company, Mr. Bradford, what is the explanation of that account?

A. Well, they were customers of ours. They operated a trust business in which they bought municipal bonds and had occasion to buy and sell stocks and they gave us the business and we reciprocated by maintaining balances with them.

Then they were personal friends and we liked to do business with our friends.

Q. How did it work with respect to the call? Explain that about Mr. Hackworth and the call.

A. Well, they have these calls on banks to publish their statements. Mr. Hackworth wanted to make his statements look good, so he would ask us to make an additional deposit for a few days so that when that call came his deposits would be built up for that period.

Q. Did you do some of that?

A. Oh, yes, we did for a few days.

Q. Was that a complimentary activity on your part?

A. That's right.

Q. What would happen to that money immediately after the call?

A. We would draw it down and use it somewhere else.

[fols. 2329-2330] Q. So, as to that money, the Nashville Bank and Trust Company was not really a depository?

A. No.

* * * * * * * *

[fol. 2331] CHARLES NELSON, JR., a witness called to testify by and in behalf of the Defendant Intervenor, after having first been duly sworn, was examined, and testified as follows:

Direct examination.

By Mr. McEnerney:

Q. Mr. Nelson, will you state your address, please?

A. 1051 Lynwood Boulevard.

Q. And what is your present occupation and title?

A. President of Home Federal Savings and Loan Association.

Q. And how long have you been employed by Home Federal Savings and Loan?

A. Since 1957.

Q. And how long have you been employed by Home Federal?

A. Since 1961.

Q. Would you tell us, please, whether your savings and loan association is a member of a trade association?

A. Yes, I think you are referring to the Tennessee Savings and Loan League and United States Savings and Loan League, two of them.

Q. Do you hold any position in the Tennessee Savings and Loan League?

A. For this year I'm president of the league.

[fol. 2332] Q. Were you ever employed by the Nashville Trust Company?

A. Yes.

Q. And how long did you work at the Trust Company?

A. Well, as a boy I worked there in the summer a good bit, but permanently beginning in 1946 until 1953.

Q. Can you describe for us the departments that you worked in at the Trust Company, and generally describe the duties that you performed while you were so employed?

A. Primarily in the Trust Department in the personal trust and in the investment end of the trust department, and with some duties in the banking department relating to customers that I knew well or wanted me to handle their business.

Q. What was your position and title when you left the Nashville Trust Company?

A. Assistant Secretary to the Treasurer.

Q. In what business was your father engaged?

A. He was president of the old Nashville Trust Company.

Q. And what period of time did he serve in that capacity?

A. Well, he worked there all of his adult life beginning in 1919, and he was the president of the Trust Company as we knew it from 1935 to 1946 when he died.

[fol. 2333] Q. And in what business was your grandfather engaged?

A. He was the president of the Nashville Trust Company.

Q. And approximately what period of time would that have covered?

A. From—I believe he became president in 1918 until his death in 1926.

Q. And what was your great grandfather's field of endeavor?

A. Well, he was in other businesses, but he founded the Nashville Trust Company in the late 1800's.

Q. Could you describe for us the Nashville Trust Company at the time you resigned during the period that you were employed there, how would you describe the Trust Company?

A. Well, the Trust Company was originally organized as a trust company with no banking department. The banking department grow up as a convenience for the trust customers. I would say that at the time that I left that the primary emphasis was still on the trust operation, and that the banking department had grown in size, but was not a real, full commercial bank in the sense that the American and the Third would be described.

Q. Can you describe the lending policies of the Nashville Trust Company while you were there?

[fol. 2334] A. Well, the Trust Company didn't have at that time—this is hard to reconstruct back that long ago, but they had a fairly conservative policy, not large volume of loans, a good many of which were real estate loans. Other loans would be more personal loans to ac-

commodate the people doing their personal banking business, some commercial loans to businesses.

Q. Would you say that many of the loans were on a collateralized basis?

A. I think that excepting—well, I think they were largely collateralized, I would say.

Q. While you were employed at the Trust Company, did the Trust Company have a credit department?

A. Not a separate department, no sir.

Q. Now in 1953, when you resigned from the Nashville Trust Company, do you have an opinion as to its competitive standing or position among commercial banks in Davidson County?

A. Well, I think we would have to say that the American and the Third were in a class by themselves and that the Commerce Union was in another category, and the Trust Company in another category, and I guess if you were ranking them purely by size, it would have to be in that order.

Q. How about the Broadway Bank?

A. Well, the Broadway—I'm just throwing it in with [fol. 2335] the Commerce Union since they owned it, and I feel that my answer to the question would include the Broadway with the Commerce Union.

Q. Mr. Nelson, why did you resign from the Nashville Trust Company?

A. At that time I thought that I had a better opportunity in another field.

Q. And what was that field?

A. In the air conditioning business.

Q. And how long did you stay in the air conditioning business?

A. Four years.

Q. Now when you left the air conditioning business in 1957, did you give consideration to returning to the Nashville Trust Company?

A. Yes, I thought about it.

Q. Did you in fact return to the Nashville Trust Company?

A. No.

Q. How many offices does the Home Federal Savings and Loan Company have?

A. Five offices in Davidson County.

Q. Would that be the main office——

A. And four branches.

Q. And four branches?

[fol. 2336] A. Yes.

Q. What is the basic function of the branch?

A. It is to take the business out to the people in the community, and to move the funds from some areas of town where there are more savings than there are borrowers and vice versa.

Approximately when was your—when were these offices, your branch offices opened?

A. I think the first one was opened in 1959, and approximately one each two years since then.

Q. And can you estimate the cost of these buildings? That is the branch buildings?

A. Well, with the land, approximately a hundred thousand dollars, excepting where we lease, in one instance.

Q. Why did Home Federal Savings and Loan decide to open branches?

A. Well, it was necessary in this area to be competitive with other financial institutions, and to serve the customers that we had, if we expected to make progress.

Q. Do you believe then that branches are necessary for growth?

A. I believe they are particularly necessary in Nashville and Davidson County.

Q. What has been your experience at Home Federal Savings and Loan as to the length of time a branch must [fol. 2337] be opened before it breaks even financially?

A. This varies somewhat with the savings picture, but at least three years, I would say.

Q. How many branches did the Nashville Trust Company have while you were employed there?

A. None, only the main office.

Q. Now based on your years of employment at the Nashville Trust Company, can you tell us why in your opinion the Trust Company had not engaged in any branching policy?

Mr. Minicus: Objection, Your Honor. The witness had left long before any of this possibility. In fact, it wasn't even a commercial bank at the time the witness had re-

signed from the company. I don't know what he can say about the branching policies, the discussions after 1955 or '53 for that matter.

The Court: He said he left there in '57, I believe.

The Witness: No, sir.

Mr. Minicus: He said he left there in '53, sir.

The Court: You left the Nashville Bank and Trust Company in '53?

The Witness: Yes, sir.

The Court: Well, of course it would have to be prior to his leaving the bank.

Mr. McEnerney: He left in '53, and I'm asking him [fol. 2338] what his opinion was why Nashville Bank and Trust did not have a branching policy in '53; I'm not asking him today.

The Court: All right, I think that's competent. Go ahead.

The Witness: There hadn't been a basic decision to go into the commercial banking business. Many trust companies, prior to the war, didn't even have a commercial bank, and the tendency to go all out in the commercial banking business by trust companies and banks to go into the trust business was a thing that was happening. That the owners didn't see fit to do this, and if you do this, then branching follows. I assume it's not the primary thing. You have to have the decision to go into the commercial banking business in order to need the branching.

By Mr. McEnerney:

Q. Is it difficult today to obtain branch sites in Nashville?

A. In the key locations, it is very difficult.

Q. And do you know whether or not these sites are expensive?

A. Yes, they are very expensive, relatively speaking.

Q. Would you describe the basic functions of a savings [fol. 2339] and loan association?

A. To promote thrift and home ownership through savings and home owners' loans.

Q. Now, in connection with the savings functions of savings and loan associations, what institutions are your competitors for savings?

A. Well, the other savings and loans are the primary competitors, and the banks next in a very big way, and then credit unions.

Q. Now in connection with the lending functions of savings and loan asociations, who are your competitors?

A. First again, the other savings and loan associations, next the mortgage loan brokers representing insurance companies, savings banks, pension funds. Then the commercial banks, and then credit unions.

Q. Do you know Kirby Primm, Mr. Nelson?

A. Yes.

Q. How long have you known him?

A. I suppose since 1937.

Q. Did you ever work with him?

A. Yes.

Q. What is your opinion as to Mr. Primm's value as a new business development man in a bank?

A. Well, he was a hard worker, persistent and knew a lot of people, and I think he did a good job.

[fol. 2340] Q. Do you know Mr. Hackworth?

A. Yes, sir.

Q. And what is your opinion as to Mr. Hackworth's ability?

A. I think he fit the Nashville Trust picture at the time as well as anybody could and did an outstanding job. The figures speak for themselves.

Q. Do you know Mr. Horace Hill?

A. I do.

Q. For how long?

A. Well, I've known him for most of my life. In business, I suppose since about 1946, really.

Q. And what was his position with the Trust Company?

A. He was the chairman of the board.

Q. And would you say that his reputation in the community would be an asset to a bank?

A. I'd say that he would be one of the people in Nashville that a bank would rather have connected with them than any other. I don't mean than every other, but certainly most desirable.

Q. When did he resign?

A. I understand about the time of the merger.

Q. Do you have an opinion as to the effect on the Nashville Bank and Trust Company when you take away [fols. 2341-2347] from the Trust Company Mr. Hill, Mr. Primm and Mr. Hackworth?

A. I'd say it would be most damaging, and maybe irreparable.

Q. Now as president of the Tennessee Savings and Loan League, could you state what the total amount of all savings—all the savings in savings and loans in the State of Tennessee on December 31, 1965?

A. I believe I have that. $1,126,000,000.

The Court: What is this figure?

Mr. McEnerney: This is a total savings for all savings and loan associations in the State of Tennessee, Your Honor.

The Court: All right.

Mr. McEnerney: On December the 31st, 1965.

By Mr. McEnerney:

Q. Would you repeat that? I'm sorry, I missed it.

A. $1,126,345,000.

Q. And what were the total amount of savings and loan loans in the State of Tennessee on the same date?

A. $1,103,323,000.

Q. And how many branches and home offices do all savings and loan associations have in this area?

A. Twenty.

* * * * * * * *

[fol. 2348] Dr. Frank B. Ward, a witness called by and on behalf of the Defendant Banks, was duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Farris:

Q. I have spoken of you as Dr. Ward. I should have said Dean Ward. Dean Ward, state your full name, your address, and your position, please.
[fols. 2349-2354]. A. Frank B. Ward, 702 Forest Hills Boulevard, Knoxville, Tennessee. I am retired.

Q. What was your former occupation?

A. I was Dean of the College of Business Administration, University of Tennessee.

Q. And how recently were you in that position?

A. I retired as of the end of September 1964.

* * * * * * * *

[fol. 2355] Q. Dean Ward, from your study of this case [fol. 2356] and your personal observation of the banking market in the Nashville area, and if you assume that prior to the merger the three largest banks with headquarters in Nashville had among them deposits totaling approximately 93 percent of the total of the commercial bank deposits in Davidson County; and if you consider that after the merger the three largest banks had among them approximately 98 percent of bank deposits in Davidson County; and if you consider that the deposits of the Nashville Bank and Trust Company amounted to only five percent, approximately, of the total bank deposits in the county, and that it operated only two out of more than fifty banking offices located in the county; and if you consider further that Nashville Bank and Trust Company enjoyed fair growth during a period from 1955 to 1960 under the leadership of a strong president who has since passed away, and that its growth between 1960 and the date of the merger had slowed down considerably and to such extent that its rate of growth was reduced while other banks in the county showed increases during the same period of time; and in IPC deposits had actually declined; and if you consider that First American

National Bank was the largest bank in the market in Davidson County prior to the merger, and has continued to grow and to be the largest, and that Commerce Union Bank, the third in size, has increased its share of total deposits and assets since the merger; and if you consider that Capital City Bank, which is now the fourth [fol. 2357] bank in size has continued to grow and now has total assets in excess of ten million dollars; and if you further consider that Nashville Bank and Trust Company at the time of the merger had a management succession problem which would have required the replacement within a short period of time of not only the chairman of the board and the president but three out of five of the executive and trust committee and three vice-presidents who were department heads, and that a number of its other officer personnel were advanced in age, and that its two most capable officers were trained in trust administration rather than in commercial banking, I will ask you what in your opinion is the effect of the merger of Third National Bank and Nashville Bank and Trust Company upon competition?

A. On the basis of what you said in your question, I would expect that competition in this area would be intensified because of the increased strength of the Third National Bank.

I am unable to say how much of their business, because I don't know how much of their business, is related to the top lending limit that they have. But, to the extent it is related, there would be increased competition.

If I consider also what presumably happened from the time of just prior to the actual merger, in that period there was intense competition.

Q. Dr. Ward, from your study of this case and from [fol. 2358] the statements already made prior to asking your opinion of the effect of this merger on competition, in your opinion has there been brought about in the Nashville banking market as a result of this merger a probable substantial lessening of competition?

A. To answer your question, I should say when we talk about competition we must not ignore the degree of competition. To say that competition existed prior to the merger is one thing.

To describe the intensity of the competition is another thing.

I noticed as I looked out of the hotel window this morning and saw the old Nashville Bank building—Nashville Bank and Trust—there was the name of the Nashville Bank and Trust Company. The very printing of that name, or the painting of the name where the public can see it, is a competitive act. But that does not tell me how intense the competition was before.

I see no reason to expect that the competition will be substantially lessened. The amount apparently involved was five percent. If we had, with a 93 percent concentration, sound banking, good services, willingness to attract loans and deposits, and if we had a good quantity and quality of product—and in looking over the record I don't find that denied—I see no reason why that would be decreased; and every reason maybe why, with a larger bank, it would be improved.

[fol. 2359] What you are really asking me is, do I believe since the merger, the First National, the Commerce Union, and the Third National, will compete less vigorously. I don't believe they will.

Q. Narrowing this question down just to these factors, Dean Ward, considering only this, that the three largest banks headquartered in Nashville before the merger had 93 percent of deposits in Davidson County, and after the merger had approximately 98 percent, do you as an economist believe that this amount of increase in market share indicates that the merger will probably have a substantial adverse effect upon competition?

[fols. 2360-2378] A. I don't see any reason for thinking that, because there has been no pattern of mergers in the Nashville district that I can gather from the record, and as I said previously, if with the three largest banks having 93 per cent of the market, you had sound banking, no adverse effects, it's difficult for me to see how five per cent increase is going to change that on the adverse side.

* * * * * * * *

[fol. 2379] Redirect examination.

By Mr. Farris:

Q. Dr. Ward, you were asked about one of the banks in this merger having disappeared as an entity. Now, when you used the word "entity," I ask you what you meant by that?

A. Well, I was trying to distinguish between the disappearance of a competitor and the disappearance of competition. They are not the same things. Since this entity is gone, naturally the Nashville Bank and Trust Company is no longer on the scene.

But that does not mean that the competition that used to be directed at that bank by the big three might not be now all directed at each other. That's what I mean.

Q. I believe, too, the word "entity" refers to corporate existence, does it not?

A. Yes.

[fol. 2380] Q. It does not refer to the physical building in which people transact business?

A. No.

Q. So far as you know, that office is still in existence as a branch?

A. Right.

Q. Dr. Ward, if the entity which disappeared due to the merger was not a meaningful or substantial competitor, what in your opinion would be the effect of its removal?

Mr. Minicus: Objection.

The Court: On what grounds?

Mr. Minicus: There is no showing, no foundation laid, that the witness and counsel mean the same thing by meaningful or substantial competitors.

The Court: He has given him a pretty full hypothetical question. You might lay a little groundwork for what you mean, by not being a substantial competitor. He has made a study of this local situation himself. He might have an opinion.

By Mr. Ferris:

Q. Dr. Ward, has your study of this situation indicated to you whether or not Nashville Bank and Trust Company was a meaningful or substantial competitor?

Mr. Minicus: The same objection.

The Court: This is before the merger.

[fols. 2381-2382] Mr. Farris: Yes, sir, before the merger.

Mr. Minicus: I don't know what he means by meaningful or substantial. I don't know how the witness can know.

The Court: The term "substantial" has been used throughout.

Mr. Minicus: We had a witness testify the other day that to him significant, substantial, major, all meant the same thing.

The Court: I will let him answer it. I think it is competent.

A. The way I arrived at the meaning of meaningful or substantial depends on what happens. If I may refer back to the question asked me by Mr. Minicus in relation to a bank lowering the price of something, whether that was meaningful or substantial depends on what happened after that. If they lowered the price and didn't gain much by it, and if the other banks didn't react and do the same thing, I wouldn't call it meaningful.

By Mr. Farris:

Q. In your opinion, then, did the removal of this bank as a corporate entity but not its physical removal in the sense that its building and place of business had been removed have an adverse effect upon banking competition in this market?

A. No, I don't think so.

* * * * * * * *

[fol. 2383] Carson Campbell Carlisle, a witness called to testify by and in behalf of the defendant banks, after having first been duly sworn, was examined, and testified as follows:

Direct examination.

By Mr. Farris:

Q. Mr. Carlisle, I believe you are a vice-president and you are the auditor of Third National Bank; is that correct?

A. That is correct.

Q. Describe your educational background and your career in banking.

A. I graduated from high school in 1930, did some accounting courses by correspondence and business school; I'm a graduate of the Stonier Graduate School of Banking; I have attended some classes at the American Institute of Banking; I started to work in 1932 at the Federal Reserve Bank, came with the Third National Bank on April the 10th, 1933. I worked in various operating departments until 1936, when I was assigned to the auditing department. I was made assistant auditor in 1945, auditor in 1951, and vice-president and auditor in 1961.

Q. Now during the last two years, describe the work you have done with respect to this merger.

A. There's been a considerable amount of work that [fol. 2384] I have done in connection with the merger, and the interrogatories. A lot of it was done at night, on Saturdays, and I wouldn't have any estimate of the number of hours that I had spent on it.

Q. But you have devoted a great deal of time in the last two years to this merger?

A. I have.

Q. What are the responsibilities of your present position?

A. My responsibilities are for the auditing and accounting of the bank. The auditing responsibilities would include an adequate audit program and an audit of each department of the bank. The accounting responsibilities would include the preparation of reports to supervise other authorities and reports for the directors and management of the bank.

Q. What auditing techniques do you employ in your auditing programs? Describe briefly.

A. We employ a continuous audit program or technique in auditing the bank. We have a continuous and daily audit control of the interest income on all notes, interest income on all securities and all rental income.

We have control of all assets, investments assets of the bank. We have continuous control of safekeeping securities of the bank. We have continuous control of all trust secur-[fol. 2385] ities in connection with the continuous audit program of the trust department.

Q. And when requests are made for information by bank examiners or others, is it your——

A. We prepare audit requests for the CPA's and bank examiners, in answer to the audit that they are making of our customers.

We have—we maintain a duplicate set of tickets for the collateral held in the discount department which is on a daily continuous basis.

Q. And do you from time to time check out a teller unannounced and unexpected?

A. We have a daily audit program on the total tellers cash and the total tellers differences. We have departmental audits and branch audits at unannounced, irregular intervals. The branches are audited and the departments of the bank are audited.

Q. I believe you send out savings accounts statements each six months. Do you get inquiries with respect to those?

A. All inquiries regarding any differences in savings statements come to the auditing department on a semi-annual basis. We also have a daily control of the inactive checking accounts in the bookkeeping department, and on an annual basis we supervise the mailing of all checking accounts statements including the inactive accounts.

[fol. 2386] Q. Now Mr. Carlisle, at the time of the merger, the auditing department of Nashville Bank and Trust Company came under your jurisdiction, did it not?

A. That's true.

Q. And what did you find with respect to the auditing department there?

A. Well, I found that there was very little continuous

audit program at the Nashville Bank and Trust Company. They did not have any continuous program on the interest income on any of the loans. There appeared to be very little audit of the savings department and there were no provisions for mailing savings statements to the customers.

There appeared to be little control of the demand and bookkeeping department. There was no control of the trust securities. In and out tickets were prepared on all securities taken in and out of the vault, but they were never checked to see whether the assets records of the trust department conformed with the in and out tickets.

Q. Now what changes have you made with respect to auditing at the Nashville Bank and Trust branch?

A. Well, we have converted all of their loans and discounts and installment loans to our method of a continuous audit program on the interest income.

We have converted their savings departments to computer and send semi-annual statements to the savings [fol. 2387] customers.

The demand deposits have been converted to the computer which assures a better control of the inactive accounts and a continuous audit has been set up for our combined trust departments.

Q. Now what did you find at Nashville Bank and Trust shortly after the merger with regard to savings accounts, addresses and inactive balances?

A. Nashville Bank and Trust had an inactive ledger, and I inquired as to how this ledger was set up. I found that there were at least two or three hundred accounts in the active ledger that had had no activity since 1947, and there was one account in the inactive ledger that—there was one account in the active ledger that had had no activity since 1914.

The addresses on both the savings ledger cards and on the savings signature cards were—there were a lot of them that didn't have the addresses on them to begin with. There were a lot of signature cards missing; there were dummy signature cards without any addresses on them.

Q. Well, were the savings ledgers in balance at the time of the merger? That is the savings ledgers of Nashville Bank and Trust Company?

A. At the time of the merger, the savings ledger number five was out of balance two thousand dollars. Apparent-[fol. 2388] ly it had been out of balance for sometime. We made an audit on September the 17th, and the ledger was still out of balance two thousand dollars, and shortly after that, we investigated this difference, and we found that on January the 8th, there was a two thousand dollar error on an account.

Q. What year?

A. 1964, January the 8th, 1964, and the account had been closed shortly after March the 1st of '64. The customer was contacted, and the two thousand dollars was restored to the ledger on November the 10th, 1964.

Q. Describe the savings tellers' procedures in handling the books of savings accounts at Nashville Bank and Trust Company.

A. Well, the savings teller posted the ledger card and the savings passbook in one operation with a savings window machine. The accumulated transactions from the machine were used by the teller in balancing out the window.

They also had a daily journal that established ledger control totals on a daily basis.

Q. Now, Mr. Carlisle, in your opinion, did this type of auditing procedure contribute to the possibility of a defalcation or an embezzlement at Nashville Bank and Trust Company?

A. Yes.

Q. Did you find one?

[fol. 2389] A. I did.

Q. How did it come to your attention?

A. A correspondent bank inquired about a savings account that we were not able to locate. In checking some of the records, we found that this account was listed on an audit tape of November the 11th, 1964, but the account was not in the ledger on March the 29th, 1965.

After considerable investigation, we found that the account was removed from the ledger on March the 1st, 1965.

Q. Now did your investigation indicate the length of time involved in this type of situation; how far back did it go in other words?

A. The records of the savings department of the Nashville Bank and Trust Company did not lend itself to going back too far. The records—some of the records back before 1962 were not available. We couldn't determine when this shortage started.

Q. All right. You mean you couldn't—could you determine at a later date after your investigation was complete when it started?

A. No, we were able to determine that there were forty-eight missing ledger cards. We were able to determine the date some of these cards were taken from the savings ledger.

Q. Well, how far back did those dates go?

[fol. 2390] A. Those dates went back into '63, I think, is as far as it dates back.

Q. All right. Now what did you do when you found this situation?

A. As soon as we found that there was a shortage in the savings ledger, at the Nashville Bank and Trust Company, we contacted the FBI, and Mr. Honetor of the FBI came over and reviewed our work papers, reviewed the false entries to the general ledger to conceal this difference, and the entries to the general ledger were all in the handwriting of Mrs. Cratty, and later Mr. Honetor, on May 25th, Mr. Honetor returned to me certain ledger cards that had Mrs. Cratty's initials on them.

This was by no means the total of the ledger cards that we felt were missing, and on May the 31st, Mr. Honetor returned to me the remaining ledger cards. The total amount was $51,209.33.

Q. Now, Mr. Carlisle, what preventive measures have you taken that would keep this from happening in the future?

A. Savings statements are sent to all savings customers each six months, which verifies direct with the customer the amount of their balance.

Q. Now, Mr. Carlisle, how, in your opinion, does an improved audit system serve the convenience and needs of [fol. 2391] the community?

A. I think that an audit system is designed primarily to protect the bank to the extent it removes the temptation to embezzle and eliminates customer errors. I think

it serves the public. Also a dishonest employee could defraud the public as well as the bank.

Q. Now, Mr. Carlisle, in your deposition dated November the 3rd, 1965, you testified that accounting methods of the two banks was somewhat different.

~~Will~~ you explain the differences?

A. Well, the Third National Bank is on a ~~completely~~ daily accrual accounting methods. The Nashville Bank and Trust Company was on a hybrid system of accruing major items on a weekly or monthly basis. There were no accruals of expenses other than interest, taxes and depreciation.

Another difference was the charges made by one department for services rendered to another department of the bank. This had the effect of increasing the gross income and increasing the expenses. It would not affect the net profit of the bank.

Another difference, the Nashville Bank and Trust Company had no provision for overhead or undistributed expense.

Q. Now, Mr. Carlisle, you were here, I believe, when Mr. Futoran showed a chart in which he projected the [fol. 2392] profits of Nashville Bank and Trust Company for the year 1964, projecting from the date of the merger, August the 18th, for the balance of that year, and I'll ask you if you agree with Mr. Futoran's projection?

A. Mr. Farris, the earnings of the Nashville Bank and Trust Company for the first seven months of '64 were about the same as the first seven months of 1963, so in my opinion, there would be no basis for showing any sharp increase in earnings in '64 or '63.

Q. Now, Mr. Carlisle, there's been a comparison of trust department profits showing that for 1963, the Third National Bank Trust Department had a net income of approximately $28,000 and showing that for the same year, Nashville Bank and Trust Company had a trust department net income of approximately $55,000.

Will you comment on that?

A. The volunteer reports that the Third National Bank and the Nashville Bank and Trust Company sent to the Federal Reserve Bank in Atlanta showed that the profits before taxes of the Nashville Bank and Trust Company were $55,976.00, and the profit before taxes for Third National Bank were $28,134.00.

The Nashville Bank and Trust Company showed no expenses for pensions and retirement. They showed no expenses for directors and trust committee fees. They [fol. 2393] showed no expenses for overhead expense. There was no expense for examinations. The salaries—if the salaries had been increased to what they are now, there would not have been this difference in the net expense.

The accounting systems and method were different between the two institutions. I don't think that a departmental expense—these departmental expenses were prepared on the same basis or are comparable.

Q. Thank you, sir.

Now, Mr. Carlisle, based upon your knowledge and experience as an auditor and your observations of the auditing and accounting procedures of the Nashville Bank and Trust Company, express your opinion with respect to those procedures.

A. In my opinion, there was insufficient lack of interest in the auditing and accounting functions of the Nashville Bank and Trust Company. This would be based on my knowledge of the continuous audit program that they had. It would be based on my knowledge of the differences in the savings ledgers that had existed for at least eight months without anybody being disturbed about it or trying to find it. I think there was an insufficient lack of interest in the auditing and accounting functions of the bank.

Q. Now, Mr. Carlisle, I'm getting into some exhibits. I hand you a paper marked Defendant's Exhibit 25 for [fol. 2394] purposes of identification, and ask you if you recognize it?

A. I do.

Q. Will you describe it and state the purpose of it?

A. The purpose of this exhibit was to compare the loans and assets of the credit unions in the State of Tennessee and in the Middle Tennessee area and in Davidson County, December 31, '64 and December 31, '65.

[fol. 2395] Q. From what source did that material come?

A. The source for December 31, 1964, was from Tennessee Credit Union League Year Book. The Year Book for 1965 had not been prepared, and the source was from a

telephone call from the Tennessee Credit Union League, Chattanooga, Tennessee.

Q. Was this prepared either by you or under your supervision?

A. It was.

Q. Do you assume responsibility for it?

A. I do.

Mr. Farris: If the Court please, we move into evidence Defendant's Exhibit No. 25.

Mr. Minicus: No objection.

The Court: It will be admitted.

(Defendants' Exhibit No. 25 was received in evidence.)

By Mr. Farris:

Q. I will hand you a document marked Defendants' No. 26, Mr. Carlisle, and ask you to describe it and state the purpose of it.

A. This compares the net deposits and reserves December 31, 1964, and December 31, 1963, and the admitted assets of these two dates on life insurance companies with home offices in Davidson County and with home [fol. 2396] offices in the State of Tennessee.

Q. From what source was that information obtained?

A. It was obtained from the Best Life Insurance Reports.

Q. Was it prepared under your supervision?

A. It was.

Q. Do you assume responsibility for it?

A. Yes.

Mr. Farris: We move into evidence Defendants' Exhibit No. 26, if the Court please.

The Court: It will be admitted.

(Defendants' Exhibit No. 26 was received in evidence.)

By Mr. Farris:

Q. Mr. Carlisle, I hand you a document marked for identification Defendants' Exhibit No. 27 and ask you to state the purpose for that.

A. This compares the correspondent bank deposits maintained by the Third National Bank on March 12, 1964,

and March 14, 1966. The purpose is to show that there is a substantial correspondent bank business by Third National Bank.

Q. From what source did the material come?

A. The source came from the general ledger of the bank.

Q. Was it prepared under your supervision?

[fol. 2397] A. It was.

Q. Do you assume responsibility for it?

A. I do. This also shows the total loans participations sold by the Third National Bank to correspondent banks as of March 12, 1964, and March 14, 1966.

Q. How many loans and participations were sold by Third National Bank to correspondent banks on each of those dates in dollar amounts?

A. March 12, 1964, there was \$17,495,601.67. March 14, 1966, \$16,363,178.07.

Mr. Farris: If the Court please, we move into evidence Defendants' Exhibit No. 27.

The Court: It will be admitted.

(Defendants' Exhibit No. 27 was received in evidence.)

By Mr. Farris:

Q. Mr. Carlisle, I hand you a document marked for identification Defendants' Exhibit No. 28 and I will ask you if you recognize that and if you do, to state what its purpose is.

A. This was the number of shareholders and the percent of shares owned by the largest shareholders of the Third National Bank on August 1, 1964, by the Nashville Bank and Trust Company on August 18, 1964, and by the combined banks on March 16, 1966.

[fol. 2398] Q. Was that prepared from the books and records of the two banks?

A. It was.

Q. Under your supervision?

A. Under my supervision.

Q. Do you assume responsibility for it?

A. I do.

Mr. Farris: If the Court please, we move into evidence Defendants' Exhibit No. 28.

The Court: It will be admitted.

(Defendants' Exhibit No. 28 was received in evidence.)

By Mr. Farris:

Q. Mr. Carlisle, I hand you a document marked for identification Defendants' Exhibit No. 30 and ask you to identify that.

A. This compares the shares and reserves of deposits of selected financial institutions with home offices in the State of Tennessee, and the loans, total assets, number of offices, and number of companies at the latest available date.

Q. From what source did that information come?

A. The source for commercial banks came from Rand-McNally Bank Directory. The source on the number of commercial banking offices came from the Comptroller of the Currency and the State Banking Department. The [fol. 2399] source for savings and loan associations came from the Tennessee Savings and Loan League. The source for credit unions came from the Tennessee Credit Union League Year Book for 1964-65. The source for life insurance companies came from Best Life Insurance Reports for 1965. The source for the number of industrial loan thrift companies came from a report from the Tennessee Department of Insurance and Banking.

The report for major independent finance companies came from the Banker's Monthly Magazine, dated April 15, 1966. This report also has another section, possibly identified as 30-A, which would give the same figures for financial institutions with home offices in Davidson County.

Q. I am going to hand you 30-A also. I will ask you if both of these were prepared by you or under your supervision.

A. They were.

Q. Do you assume responsibility for Defendants' Exhibits 30 and 30-A?

A. I do.

Mr. Farris: If the Court please, we move both of these exhibits be admitted into evidence.

The Court: They will be admitted.

(Defendants' Exhibits Nos. 30 and 30-A were received in evidence.)

[fols. 2400] By Mr Farris:

Q. Mr. Carlisle, I hand you a photograph marked Defendants' Exhibit No. 9. It is a set of photographs showing Christmas savings payments and savings batch sheets. I will ask you if you recognize those photographs?

A. Yes, I do.

Q. What do those photographs represent?

A. They represent the method of filing some of the savings department's worksheets, deposit tickets, and credits. These photographs were taken at about the same time that we started investigating the shortage at the Nashville Bank and Trust Company, and it may be that they were prompted by our discovery, our recognition, of the inadequate method of filing savings records.

Mr. Minicus: Objection, Your Honor.

The Court: Sustained.

By Mr. Farris:

Q. Had you had an opportunity to observe this filing method prior to the time of the merger?

A. I had observed some of the filing methods at the Nashville Bank and Trust Company prior to the merger. These records were filed in a storage room that I do not remember seeing before the merger.

Mr. Farris: If the Court please, the Intervenor has some exhibits to introduce through this same witness.

[fols. 2401-2410] The Court: Do you want this exhibit in?

Mr. Farris: There will be another witness on that exhibit, if the Court please, later. I thought this witness knew about that, but we will reserve that for another witness.

By Mr. O'Malley:

Q. Mr. Carlisle, I hand you Intervenor's Exhibit No. 31 for identification and ask you if you will describe that document to us, sir.

A. This document shows deposits, loans, and total resources at December 31, 1965, of all banks in Tennessee compared with Third National Bank. The source was Rand-McNally Bank Directory, which included some advance printer's proofs. The final edition of the '65 directory was not available, so printer's proofs were used.

Q. Was this compilation prepared by you, Mr. Carlisle?

A. Yes, it was.

Q. Do you take full responsibility for it?

A. Yes, subject to any error in the printer's proofs.

* * * * * * * *

[fol. 2411] Cross-examination.

By Mr. Minicus:

Q. On your direct examination some of your answers seemed, shall we say, critical of the auditing procedures of Nashville Bank and Trust Company. In the last ten years, Mr. Carlisle, what experience have you had with auditing procedures within banks having less than $50 million in resources?

A. During the last ten years, Mr. Minicus, I have assisted a number of banks in the Middle Tennessee area in a directors' examination for the bank; I have had an opportunity to observe some of the auditing procedures that the banks have had. I have assisted a number of correspondent banks in their director's examinations and in a review of the auditors' examination.

Q. How did the auditing procedure of those smaller banks compare with the Nashville Bank and Trust Company?

A. I think practically all of these banks, Mr. Minicus, had some type of a continuous audit program.

Q. What do you mean by a continuous audit program?

A. Where they would continuously audit the income of the bank, have a continuous control of the inactive

checking accounts of the bank, the inactive savings accounts of the bank.

[fol. 2412] Q. Did the officials at Nashville Bank and Trust Company strike a daily balance at the end of each day?

A. Mr. Minicus, the tellers at the Nashville Bank and Trust Company balanced the cash at the end of each day. The bookkeeping departments posted a control each day. They posted the general ledger each day. They posted the trust ledger each day.

Q. So from day to day, they knew how they were going along, didn't they?

A. Yes, they did, but there was no continuous audit program on a day-to-day basis.

Q. What would the difference be?

A. Well, the difference being that there was no check by an independent person, no control by someone not doing the work of the interest they collected on the loans, on the activity on any inactive ledgers, on the——

Q. Activity on the inactive ledgers, did you say?

A. Yes.

Q. What would that be?

A. Mr. Minicus, I think that any sound bank would have an inactive ledger. I think that when any—when there was activity on an inactive ledger, that the audit and control officer should approve that activity.

Q. Why?

A. To prevent defalcations.

[fol. 2413] Q. Daily?

A. Daily, yes, I do. Most banks have that, Mr. Minicus.

Q. The banks that you have——

A. Knowledge of.

Q.—examined in Tennessee have this daily control on inactive ledgers?

A. Yes.

Q. Does it require a separate officer to do that work?

A. It should, yes. The title of the officer wouldn't make a great deal of difference. There are a lot of banks that don't even have an auditor that have a good control on the inactive ledger. As an audit and control officer, regardless of what his title is.

Q. How does he run that?

A. It's his responsibility, there can be no posting to that inactive ledger without his okay.

Q. You mean to say then that if a withdrawal or a deposit comes into a inactive account, he would have to okay it?

A. Right.

Q. And is it your testimony that if an account had been inactive for a long period of time, at Nashville Bank and Trust Company, and suddenly became active, there [fol. 2414] was no check on it, is that your testimony?

A. Mr. Minicus, they had an inactive ledger. There had been no activity in it so that I could observe what audit procedures were used. There were at least three hundred accounts in the active ledger——

Q. In the active ledger?

A. —that had been inactive since '47. That's in my opinion——

Q. Do you know that they didn't check any activity that arose in inactive accounts?

A. At the time——

Q. Can you say that?

A. At the time of the merger, there was no check on activity on inactive accounts.

Q. If an account came in on January 15th, that hadn't been active for a year, are you sure that no officer at Nashville Bank and Trust Company checked that activity?

A. January the 15th, 1965?

Q. 1963.

A. 1963. I am testifying as to the procedures I observed on the date of the merger.

Q. But you don't know whether they were checked or not, do you?

A. They were not being checked at the time of the merger.

[fol. 2415] Q. What do you mean at the time of the merger? You mean on August the 18th?

A. On August the 18th.

Q. They were not being checked?

A. Not being checked on that day.

Q. Do you know whether they were being checked on August the 15th?

A. My observations at the Nashville Bank and Trust Company prior to the date of the merger, on the daily audit procedures was limited.

Q. Thank you.

Now how many savings accounts were there at the Nashville Bank and Trust Company at the date of the merger?

A. It would only be a guess that I would have.

Q. Don't you know?

A. No.

Q. Would you make a guess?

A. Six or seven thousand.

Q. And out of those six or seven thousand, with all of this inefficient checking that you discovered there, you found one error in a checking account, is that correct, sir?

A. I found that a savings ledger was out of balance.

Q. And that was the result of one error?

A. It was the result of an error on January the 8th, [fol. 2416] 1964.

A. Yes.

Q. What do you use at Third National Bank to run your balances? Do you have automated equipment for that?

A. We do now, yes.

Q. Do you ever have errors in your bookkeeping department at Third National Bank?

A. Of course with the computer, Mr. Minicus, the ledgers are always in balance.

Q. The computer never makes an error?

A. I never have known the computer to make an error.

Q. Then it's your testimony that your computer is perfect and makes no errors, is that correct?

A. Mr. Minicus, since the savings accounts and since the checking accounts have been put on the computer, they have never been out of balance with the general books.

Q. Now prior to the time you had the computer, how did you do it?

A. We had errors.

Q. You had errors prior to the time?

A. Prior, yes, sir.

Q. Thank you, sir.

A. They didn't last for eight months.

Q. Now you say that you came across evidence of [fol. 2417] en embezzlement at Nashville Bank and Trust Company?

A. Yes, sir.

Q. When did that come to light, Mr. Carlisle?

A. That came to light in April of '65.

Q. 1965. That was almost a year after the merger, right?

A. Mr. Minicus, the merger was on August the 18th.

Q. '64?

A. '64.

Q. And this was 1965?

A. This was in April of 1965, yes, sir.

Q. So that was many months after the merger?.

A. Eight months after the merger.

Q. What happened to all of your vaunted checking systems during that eight months, Mr. Carlisle?

A. Mr. Minicus, as soon as we discovered the condition of the records in the savings department of the Nashville Bank and Trust Company, we proceeded immediately to transfer it to the computer on the system that we had.

Q. So that for eight months you carried that two thousand dollar error.

A: We found the two thousand dollar error shortly after the audit date on September the 17th.

Q. But you didn't find the embezzlement?

A. Did not find the embezzlement.

[fols. 2418-2433] Q. Have you ever known there to be any shortages, embezzlements, defalcations at Third National Bank?

A. Yes, sir.

Q. There have been?

A. There have been.

Q. I hand you or I show you a booklet, Mr. Carlisle, and ask you if you recognize that booklet?

A. That's the annual report of Third National Bank for 1964.

Q. And what is the purpose of this report?

A. This is a report to the stockholders of the bank showing the condition and report for the year, '64.

Q. I ask that the annual report of the Third National Bank for 1964 be marked as Government Exhibit 99 for identification.

* * * * * * * *

[fol. 2434] Redirect examination.

By Mr. Farris:

Q. Mr. Carlisle, I believe counsel questioned you with respect to the number of inactive accounts of Nashville Bank and Trust Company which were found in the active account ledger. I think you indicated some 300 accounts. If they had been following a practice of making a continuous audit, is that situation likely to have occurred?

A. No.

Q. Now, Mr. Carlisle, with respect to the procedures [fol. 2435] taken immediately following the merger, you have been questioned about the length of time, some eight months, which transpired from the time of the merger until the time of an embezzlement being discovered. I want to ask you if you will tell us just what was done by your auditing department immediately following the merger.

A. Mr. Farris, with regard to the savings department of the Nashville Bank and Trust Company, an audit was made the middle of September. As I said, we found that a savings ledger was out of balance. We had some idea of the inadequate—the procedures that I considered inadequate in the savings department; and we immediately made plans to transfer it to the computer.

The computation of savings interest is on a monthly basis compounded each six months. Interest paying dates by the Third National Bank are April 1 and October 1. And before a savings account can be transferred to the computer, the code sheets have to be worked up to instruct the computer as to the name and address, the date the account was opened, the date of the last activity, the monthly balances for the preceding twelve months' period.

And April 1, 1964, was the date that we chose to put the savings on the computer. It was done promptly.

Q. Do you know any reason why that embezzlement was not discovered when you first went in there in September 1964?

[fol. 2436] A. Other than the $2,000 which we located, the savings ledgers were in balance. The shortage or defalcation was caused by the removal of a ledger card from the ledger, a false entry to the general books of the bank, and a reduction in the amount of teller's cash.

Q. With the cards removed, was there any indication that it had occurred until something later brought it to your attention?

A. There was not.

Mr. Farris: Thank you.

* * * * * * * *

WARREN P. GRAY, a witness called by and on behalf of the Defendant Banks, was first duly sworn, was then examined and testified as follows:

Direct examination.

By Mr. Farris:

Q. Mr. Gray, state your position with the Third National Bank?

A. Senior vice-president and cashier.

[fol. 2437] Q. Describe your educational background and your banking career to date.

A. I graduated from Battleground Academy at Franklin, Tennessee, also a graduate of the American Institute of Banking and of the Stonier School of Banking at Rutgers University.

I started my banking career at the First Bank and Trust Company in Franklin, Tennessee, in 1929. When that bank merged with the Harpeth National Bank in Franklin, I joined that institution and started at Third National Bank in 1934. I worked in various operating departments and had supervision of some of those departments, as well as personnel; and during recent years have had the operating departments as my responsibility.

Q. What banking associations have you been active in?

A. Well, I was active in the American Institute of Banking at the local level, and in NABAC, the Association for Bank Audit Control and Operation, on a national level.

Q. What positions have you held with NABAC?

A. I was on the Research Committee for a period of three years at the time that NABAC's interests were primarily toward the development of automation; was a member of the board of directors for six years, and of that time on the executive committee for three years.

I believe NABAC is an abbrevation for that association [fol. 2438] spelled N-A-B-A-C? Is that correct?

A. Yes, sir.

Q. And that is known as the Association for Bank Audit Control and Operations? Is that its full name?

A. That's right.

Q. Mr. Gray, describe the work of your department.

A. We have the responsibility for the processing and presentation of all deposited items, for all of the bookkeeping records, central information files, wire transfer, mini-transfer, purchasing, data processing, including systems, design and programming and customer services.

Q. Mr. Gray, a witness for the Plaintiff has stated in effect that demand deposits are essentially cost-free. Do you agree?

A. No, sir. In the first point, the activity of the checks and deposits and savings accounts is insignificant in comparison to the activity and the natural resulting costs of servicing demand deposits.

For example, during the first four months of 1966 we processed a total of 16,433,271 checks. Of this part, only 86,043 items represented savings activity, which is .52, or fifty-two one-hundreths of one percent.

[fol. 2439] Only four per cent of our computer time is required for our savings accounting. We have 216 employees in the check processing departments. We have an operations building where these check operations are handled, and we have 38,000 square feet of work space.

Of course the majority of our paying and receiving tellers would devote their time or are required for the servicing of demand deposits. We have ninety-five to a hundred paying and receiving tellers.

Of course a great deal of our branches were established and directed for the servicing and directing of demand deposits.

Our *business development* department would devote a majority of its time and effort to demand deposits and all of the time in the national accounts field.

Our correspondent bank departments is interested and all of the expense and efforts of that department are for demand deposits only.

Of course many of our services are primarily designed for demand deposit customers. There is, of course too a difference in the amount of available money that we have from deposits to invest. Your Federal Reserve requirement on demand deposits is sixteen and a half per cent, and on savings deposits four per cent.

Of course an active account costs much more to service [fol. 2440] than an inactive account. I would say that a lot of our active accounts cost us five per cent as a minimum, or more, and in my opinion, our demand deposits costs us right at three per cent.

Q. Now, Mr. Gray, tell us of the problems related to the installation of a computer at Third National Bank.

A. For several years after the Bank of America had done the original groundwork for developing the computer, our bank was represented in participation of many meetings and seminars sponsored by banking associations and particularly by major banks in the United States that were spending a great deal of money and research in that area.

We devoted, oh, I guess about four years to studying and to participating in these meetings. Finally in 1961, we asked four manufacturers for proposals as to the equipment that we would select, and after the selection of that equipment, we gave tests to 135 employees to start our programming, our staff. From this group, we selected fourteen who were sent to school, and from the top nine, we started our initial programming staff.

This group with the assistance of the equipment manufacturer started systems design and programming work in 1961. November the 1st, and our computer was installed in March, 1963. During this time the programming staff and supervisors made six trips to Chicago for test-[fol. 2441] ing the programs on available equipment. Their

salaries and travel expenses for this group during that time were about $105,000.

The computer required special building facilities with very strict air conditioning and humidity controls, and absolutely dust-free quarters. We didn't have anything like that available, of course, in our building, and although the Third National Bank building was considered a very well-built structure, when we got with the architects and engineers, we found that the area available for the computer was not strong enough to hold the weight load, and after getting estimates of remodeling costs, we decided that it was not an economical thing to remodel the building and provide space there, so our operations building at 4th and Commerce was built primarily for that purpose.

Q. Has Third National Bank made any changes in operating systems prior to the installation of a computer?

A. We change systems all the time, experimenting, one way and the other. Sometimes not too good, but in 1957, when it was obvious that account numbers would be required for any kind of automated system, we numbered our accounts, and in November of that year, we installed the first semi-automated equipment that was available to banks. We were the first bank in Tennessee to make that installation.

It was the first time where banks had electronic assistance in verification of account posting, and the first [fol. 2442] time that we had anything other than the human effort to eliminate human errors.

The account numbering was considered—we had some objection in the bank, however, it really is just a tool that had not previously been used to help banks identify accounts. If you have ever tried to read many of the illegible signatures on checks, why you know that a number or anything will help you, so that really they are a method of giving—of reducing errors, more efficient operation.

We have used them in savings accounts for years, but it had never been applied to the checking accounts until the late fifties.

This was an interim step of using this equipment until the computers were developed and were available to us, and in my opinion, it is still the best available system

for small and medium sized banks that cannot afford or cannot use computers.

There are sixty-seven banks in Middle Tennessee area that vary in size from one million to fifty million dollars. Thirty-four of these banks are using this type of equipment, and in Tennessee there are fifty-three banks of varying size from ten million to fifty million, and thirty-nine of these banks are using either this equipment or computers.

Q. What steps had the Nashville Bank and Trust taken prior to the merger with respect to semi-automated equip- [fol. 2443] ment?

A. None. They have used the same systems the Third National Bank used when it was organized in 1927.

Q. How much of an investment does Third National Bank have in computer equipment at this time?

A. Approximately fifty thousand dollars.

Q. Why was Third National willing to spend the money necessary for the preparation, the building and the equipment to automate its accounting systems?

A. Several reasons, and it would be hard to place them in order of what brought about the decision. I would say one thing though was—one very important one—was the ever-increasing volume of paperwork that we were faced with handling.

In 1965, we processed in excess of forty-five million checks which represented a two hundred forty per cent increase in the past ten years. As more items were processed, more clerical help was required, more errors were made, effiicency decreased, and we felt that we had to take advantage of any equipment or developments that were offered to us to improve efficiency, to reduce errors in customers' accounts, and one of the—as Mr. Carlisle stated in his testimony, we are in balance.

That is an automatic advantage of the computer. The accuracy of the computer is so far superior to anything [fol. 2444] else, one of the big advantages, of course, is the fact that we are able to furnish management with prompt, accurate reports, and similar information to other departments in the bank. This was almost impossible prior to the computer, and certainly under a manual system was not a prompt revision or report of activities.

Mr. Farris: If the Court please, I notice it is a little after one o'clock, it is a little after one o'clock. Do you wish me to continue?

The Court: How much more do you have of him on direct, do you think?

Mr. Farris: I believe it will take twenty or thirty minutes.

The Court: Well, take another ten minutes.

Mr. Farris: Yes, sir.

By Mr. Farris:

Q. Now, Mr. Gray, these advantages of having a computer, in what way do you—is it your opinion that they serve the convenience and needs of the community as well as the bank itself?

A. Well, I think in the areas that we are talking about, we can say that it is a service to the customers of the bank. It enables us to give services that with this ever-increasing volume of business and with the increasing shortage of clerical help, I think would be absolutely im- [fol. 2445] possible for us to operate our departments today without automation.

Automation or computers have assisted in not only getting the work done, but one of the big advantages, I think, it has upgraded jobs so much that now we have a better type clerical employee seeking employment with us than we would under a manual system. As more and more people are receiving college educations, I think we find a smaller percentage of people interested in the old clerical jobs as we have known them, and not only does it upgrade the job, but it opens up many new opportunities that were foreign to banking for these employees and those seeking a career in banking just a few years ago.

Q. Now has the use of the computer resulted in any people being discharged from their jobs at Third National Bank?

A. No, sir. We have shifted jobs, shifted people rather, and in most instances, of course, the normal attrition takes care of more than the change in system provides for, but I would say that where we have reduced employees in some areas, that no one lost a job as a result of automation.

Q. But you think you are doing the volume of work with less employees than you would otherwise have had to have?

A. That's right.

Q. Now, Mr. Gray, after the merger, what did you find with respect to the equipment at the Nashville Bank and [fol. 2446] Trust Company?

A. The Nashville Bank and Trust Company had seventy-one pieces of various accounting machines under maintenance contract. Only five pieces of this equipment was less than five years old. Twenty-nine pieces were over ten years old, and three pieces were over forty years old and not in use and stored in the basement, but they were still paying an annual maintenance fee on them.

During the last five-year period, we purchased 111 pieces of new accounting equipment.

Q. In your opinion, what effect did this equipment situation have on the earnings figures of Nashville Bank and Trust Company?

A. I would think that it made the earnings figure look better than realistic in that they were not providing for actual replacement of worn-out equipment.

Q. What has Third National Bank done about replacing equipment since the merger?

A. We have had to replace a great amount of the equipment for the simple reason that it was worn out, would not operate, and then a great deal of the equipment has been discontinued by the fact that we merged a lot of our operating departments into one.

Q. Was this replacing done to bring the equipment up to date?

[fol. 2447] A. No, sir, every piece of equipment that has been replaced was replaced at the request of the manager of that office when he said that the equipment would not continue to operate.

Q. In what condition did you find the signature authorizations when the banks merged, Mr. Gray?

A. I'm sure that this is a problem for all banks. However, in the Nashville Bank and Trust Company accounts, approximately ten per cent of the checking accounts, there was a variance in the signature authorization and the title of the account. No signature authorizations on

many accounts, and on one group of 305 accounts, no signature cards available at all.

Q. Now what did you observe with respect to overdrafts at the Nashville Bank and Trust Company just prior to the merger?

A. Well, that's another problem I suppose with all banks in that we do have customers that are overdrawn, some consistently. However, the surprising thing about Nashville Bank and Trust Company was the consistent policy apparently of permitting officer and employee overdrafts. This is not permitted at Third National Bank, and in my opinion, not in any well-managed bank.

Q. Now, Mr. Gray, with respect to the head of the operations department at Nashville Bank and Trust Com- [fols. 2448-2462] pany, what is your opinion of this individual in charge of that department?

Mr. Minicus: I don't think the anonymity of that question is proper.

Mr. Farris: He's going to name him if you want him named.

By Mr. Farris:

Q. John Hardcastle is the name.

A. John Hardcastle was the manager of the bookkeeping and transit department, and I think that John was a very capable individual. He was aggressive. However, I think that he operated without the support of the immediate department head, and without the interest of his immediate superiors and the bank management.

Q. Mr. Gray, in your opinion, from your observation of commercial methods and equipment used, was NB&T a modern institution?

A. No, sir.

Q. And from your observations of it, in your opinion, could it have adequately served the convenience and needs of its community?

A. No, sir. As I said before, I think that the areas we are talking about are service areas primarily and the Nashville Bank and Trust Company would have had difficulty in continuing adequately to serve in these areas its customers.

* * * * * * * *

[fols. 2463-2464] Cross-examination.

By Mr. Weinbaum:

Q. Yesterday you indicated that there were sixty-seven banks in Middle Tennessee of $1 to $50 million in deposits, and thirty-four were using semi-automated equipment. You went on further and stated that throughout Tennessee there were fifty-three banks between $10 and $50 million in size, and thirty-nine were using semi-automated facilities or computers.

In this latter breakdown, do you know how many of those fifty-three banks between $10 and $50 million were using semi-automated equipment, and how many were using computers—that is, the breakdown of the thirty-nine using one or the other?

A. Three using computers, I believe; and the others, semi-automated equipment.

Q. Thirty-six using semi-automated equipment?

A. That's right.

Q. Do you know what the other fourteen banks might have been using?

A. Yes. The majority of them were using older style conventional bookkeeping machines without any electronic features or any advantages that electronics might offer them.

Q. They were using the type of equipment that the trust company was using?

A. That's right.

* * * * * * *

[fol. 2465] Q. First American was the first bank in Nashville to computerize, is that correct?

A. They were the first to get delivery of their equipment.

Q. And that was——

A. We were the first to order.

Q. And the record indicates that First American computerized in June of 1962.

A. I imagine that's about right.

Q. There is testimony also, Mr. Gray, that Commerce Union, a bank with deposits of approximately $186,000,000, installed its computer in early 1964.

Do you know Mr. A. W. Redmond of General Electric in the computer department?

A. I don't recall the gentleman.

Q. In the August, 1965, issue of the Southern Banker, at page 38, he writes:

"Less than four years ago, there was not a single MICR computer system using magnetic tape installed [fol. 2466] in a bank in the southeast."

This article was written in August, 1965. Would you agree that this was probably the case?

A. That would have been 1961. Probably, yes.

Q. Are these indications, in your judgment, Mr. Gray, that is the dates at which banks in Nashville have computerized, and the statement of Mr. Redmond, would these be indications to you that full computerization is really just on the threshhold, particularly in the southeast as far as commercial banking is concerned?

A. Well, I think that full automation is just on the threshhold throughout the United States. I believe it was probably 1960 before any banks had—before the MICR program had been developed. However, that doesn't change the testimony that I gave yesterday in expressing my opinion that there were semi-automated equipment available to banks as early as 1957, when we installed equipment, and that in my opinion, that is still the logical and possibly most efficient equipment for smaller banks to use.

Q. A bank the size of Nashville Bank and Trust Company?

A. When you get into the competitive situation, if the Nashville Bank and Trust was to stay competitive, I think that it would have had to offer computer services since all of its major competition in Nashville was offering computers.

[fol. 2467] Q. Would you say that Commerce——

A. I would like to mention one thing there. Your Commerce Union statement indicating they were rather delayed in installation of equipment, and I think we need to take into consideration that the hundred and whatever million dollars that you have mentioned in there of total deposits represent their entire system which is a branch throughout the state, and their main office, they do not have that high a number, so we really don't have a com-

parison there of the deposit total that that bank might have against the other Nashville banks.

Q. Are you suggesting that the need for computer at Commerce Union was not very great to the extent that the larger banks had this need?

A. No, I think that due to the fact that they had a branching system, they had a lot more work to do in all of their branches throughout the state before they could get to a computer.

Q. How would their branching system create more problems than your branching system?

A. Well, it's more scattered geographically to begin with.

Q. And effect does this have on check clearing and so on?

A. Well, I think that your facilities for transporting [fol. 2468] the documents alone create a lot of problems in branches that you do not have in a local institution.

Q. Were you serving in your judgment the convenience and needs of the community prior to the time that you got a computer?

A. To the best of our ability.

Q. Do you believe that Commerce Union, prior to 1964, early '64, was fulfilling the convenience and needs of the community without a computer?

A. To the best of their ability.

Q. And it is your testimony that a bank of forty-five million dollars in deposits had to have full-scale automation like Third did in order to be competitive?

A. No, sir, that was not my testimony. My testimony was that they should have taken steps to use semi-automated equipment.

Q. That semi-automated equipment would have been the best, most logical avenue for a bank that size?

A. In 1957, it would have been, yes.

Q. It would have been the best avenue in 1962?

A. I don't know.

Q. Well, would you express an opinion, Mr. Gray, as to whether, if you were president of Nashville Bank and Trust Company, you would have embarked upon an expenditure of the nature that your Third National Bank [fol. 2469] has to fully automate the Trust Company?

A. I would have embarked on an expenditure to determine whether or not a computer was a feasible approach and step for my bank to take.

Q. You have indicated that there were very, very few banks in this size category in Tennessee that do have computers like Third does, is that correct?

A. Well, there are very few banks that size in Tennessee.

Q. Well, would you hazard an opinion as to how many banks that size throughout the country have full computerization like Third?

A. In a recent survey that the American Bankers Association and NABAC published, as I recall the figures, there are about six hundred banks in the United States between twenty-five and fifty million dollars, and to this questionnaire as I remember it, about 160 of those banks responded, and 83 of them had their own computers.

Now I think I'm roughly close to those number of banks that responded.

Q. They had on the premises computers?

A. Either on the premises or were using equipment. There was not a distinction made in the two as I remember it.

Q. Based on the facts at your disposal, Mr. Gray, would you have believed that semi-automation or full [fol. 2470] computerization would have been the most logical, most feasible course for Nashville Bank and Trust to take in 1962, 1963?

A. I think that they could have used the semi-automated equipment several years prior to that.

Q. How about '62, and '63?

A. Repeat your question again if you will.

Q. Whether the semi-automation or the full computerization would have been the most feasible course for the Trust Company to pursue.

A. Well, in 1962, I think that, in my opinion, they should have already had semi-automated equipment and should only have had the decision to make as to whether to go to the computer or not.

Q. Would the semi-automated equipment, in your judgment, have been doing sufficient job to make the Trust Company competitive as you indicate?

A. Not as far as full computer services are concerned, no.

Q. Although First American didn't install its computer until June of '62, and you didn't install yours and have it working until March of '63, you believe—and Commerce Union did not install its computer until early 1964, you believe that in 1962, and 1963, Nashville Bank and Trust Company should have been keeping pace with the other banks as far as full computerization is concerned?

[fols. 2471-2475] A. I didn't say that. I said they should have had semi-automated equipment, and they should have been making studies as to whether full automation was a feasible and economical thing for them to do.

* * * * * * *

[fol. 2476] Q. Can you say that the applications put on the computer after the merger were directly attributable to the merger except insofar as Nashville Bank and Trust Company accounts may have been integrated?

A. No, I wouldn't say that there were.

Q. You wouldn't say they were attributable?

A. I wouldn't say they were directly attributable to the merger, no.

Q. Prior to '63, Mr. Gray, you indicated that you were semi-automated.

A. Yes.

Q. And that you were pioneers in bringing this equipment in in 1957, is that correct?

A. We were——

Q. The semi-automated equipment?

A. We were the first bank in Tennessee to install it, I think.

Q. I believe you testified that this equipment was not available prior to 1957?

[fol. 2477] A. That's right.

Q. So that prior to 1957, Nashville Bank and Trust Company couldn't have been semi-automated?

A. That's correct.

Q. Can you describe what your system was like prior to 1957? Did you have many of the same type of machines that the Trust Company had?

A. We had the same type of machines, but our systems were different for the most part.

* * * * * * *

Q. Do you have an opinion, Mr. Gray, as to what it would have cost Nashville Bank and Trust Company to have semi-automated facilities, to convert to semi-automated facilities in the year 1963?

[fol. 2478] A. I think that their equipment costs would not have exceeded $50,000, possibly.

Q. And that is quite a substantial difference from the $10,375 a month, or $124,500 a year, which is estimated as the cost of full automation for the Trust Company.

A. Of course it is quite a difference in what you are getting.

Q. That's true. You indicated that automation has upgraded jobs so that the type of clerical help seeking employment is of higher capabilities and so on.

A. I didn't mean to indicate that the type seeking employment is, but I meant that I think we can satisfy a higher type of person with the jobs that we have today than we could when we had less attractive jobs—bookkeeping.

Q. Bookkeeping jobs are more attractive now?

A. The jobs that have replaced the old machine operation thing are certainly much more appealing.

Q. What is the minimum salary you pay a bookkeeper?

A. At the present time?

Q. Yes, sir.

A. Oh, I think $240 a month, possibly.

Q. Are there any that are making $230 a month?

A. What?

Q. Are any making $230 a month?

[fols. 2479-2481] A. I don't know what the minimum is right at the present. I can't recall the figures. It is a dollar and what an hour—$240, whatever the minimum figure is would be the minimum that we start them at.

Q. So there are people at Third who are making approximately $3,000 a year, or just below that, in the bookkeeping department?

A. The very beginners, possibly.

Q. What are the people doing that have been displaced by your machines? You have indicated that you have not had to fire anybody or terminate their employment.

A. Most of them seem to be raising families.

Q. They have retired voluntarily?

A. Yes, None have been forced to retire by our request.

Q. So that there aren't a lot of displaced people still working at the bank?

A. No. A lot of them have been transferred to other jobs in other areas—tellers, branch officers, any number of places.

* * * * * * *

[fol. 2482] Overton Thompson, Jr., a witness called by and on behalf of the Defendant Banks, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Farris:

Q. Mr. Thompson, give your address and your position, please.

A. My home address is 3419 Hampton Avenue here in Nashville, and my present position is vice-president of the Third National Bank.

[fol. 2483] Q. Describe your educational background.

A. I was educated here in Nashville. I went to Wallace University Prep School and Vanderbilt University for six years, which included an A.B. and an LL.B. I went to Harvard for one term to take a tax course. And I suppose the only other educational experience would be the Graduate School of Banking at Rutgers.

Q. You are a member of the Bar of the State of Tennessee, are you not?

A. Yes, sir.

Q. Did you practice law for some time before you went into banking?

A. Yes, sir, I actually practiced for one year. I was in a law office for the three years I was in law school just doing leg work.

Q. Describe your career in banking, when it began and what positions you have held.

A. I joined the Trust Company immediately after I returned home from the army, or immediately after my one term at Harvard actually. It was in June of '46. Since that time I have been in the trust department, or rather up until the time of the merger, in the trust department doing administration of estates and trusts; and later my primary duty was that of solicitation of trusts and estates.

Q. Solicitation of trusts?

[fol. 2484] A. Yes.

Q. That was your primary duty?

A. That was my primary function toward the end of my tour in the trust department.

Q. And at the present time you are the manager of that branch of the Nashville Bank and Trust branch, are you not?

A. Yes, sir.

Q. When did you become the manager of the branch?

A. As of the date of the merger—August 18, 1964.

Q. At the time you became the manager, was Mr. Hackworth still an officer at that branch?

A. Yes, sir. He was made vice-chairman of the Third National Bank as of the date of the merger. He maintained his office there at the Trust Company, and of course was there until he died early this year.

Q. Mr. Thompson, you mentioned that your principal duties in the trust department during the latter years was outside solicitation of trust business. Did you find much time to do outside solicitation?

A. Certainly not as much as I would like to have done, and certainly not as much as I should have. Actually you have to be in the trust business to sort of understand the problems of trying to get out of it.

[fol. 2485] Having been, say, fifteen years in sort of trust administration, I naturally, acquired a few accounts and got right close to a few customers. It was rather difficult to get away from it in the first place.

Secondly, we had a number of younger men coming into the trust department from time to time who were taking over my accounts, and they would stay a few years and leave, and every time one left, of course, I was back in the trust business again.

So I really did not have the time to give full time to trusts and estates.

Q. How many young men came and left the trust department during that time?

A. Going back during my service with the trust department, we had five that were primarily altogether in the trust department—five young men who came and left.

Q. Where are they now?

A. Well, if I might run down the list: One, Norman Frost, went with the Telephone Company. Tom Proctor is presently practicing law. Edgar Derryberry is in business here in Nashville. Lyn Haston went initially with a bank in Kentucky, and since that time I believe he is with the State of Tennessee at Memphis State University.

Charlie Nelson, of course, was with us, and he left to go in business and is presently with the Savings and [fol. 2486] Loan Association here in Nashville. Those are the ones who were primarily concerned with the trust department operation.

Q. Do you know why these young men left the trust department of Nashville Bank and Trust Company?

A. Of course, working with all of them very closely, I think I can say that they certainly left for a better job and a better opportunity for advancement.

Q. You mentioned some other problems of the trust department at Nashville Bank and Trust Company.

A. Certainly one problem—and this, I suppose, would apply to all trust departments—but one we have had in recent years is the U.S. Trust Company coming out of New York to solicit a number of the big institutional accounts as well as individual accounts here in Nashville and taking them up to New York.

Another problem that we had, of course, and again this might be common to most trust depeartments, was the problem of obtaining the cooperation of your banking department with the trust solicitation.

Another might be the problem of selling our directors on our trust services—an example of that being here a few years back we had a director whose estate was administered by one of the other banks.

Q. That other bank being First American, I believe?

A. Yes, sir.

[fol. 2487] Q. Did you ever have any difficulty getting the cooperation of the commercial side of the bank in attempting to gain trust business?

A. Well, I think that's a continual problem. I mean, it's a matter of selling something. You have to keep on constantly and it is not something that is easy. We always had a problem with it.

Q. Going back a minute, you mentioned the names of some young men who were with the Nashville Bank and Trust Company. Was Elvis Pendergrass one of those?

A. Yes.

Q. I asked you about trust, but he was in the other end?

A. Yes, sir. We had at least two others in my recollection that were with us and left—one being Elvis Pendergrass. I really don't recall his title. He was assistant secretary or treasurer. He left to go with Capital City Bank shortly after it organized.

And of course Kirby Primm, who left here a year or two ago to go with First American.

Q. Do you know whether or not they left in order to receive increases in salary?

A. I am quite certain that that was the primary purpose.

Q. Now, Mr. Thompson, when you first returned to [fol. 2488] the Nashville Bank and Trust Company after World War II, who were the department heads at that time at Nashville Bank and Trust Company?

A. Well, in the mortgage loan department I believe it was Albert Thomas. In the banking department it was Mr. Young. Mr. F. B. Young. In the trust department it was, of course, Mr. Parker. And in the real estate department it was Kenneth Brush.

Q. At the time of this merger on August 18, 1964, were those same people the department heads at Nashville Bank and Trust Company?

A. Yes, sir.

Q. Had there been any change in department heads during that period of almost twenty years?

A. No, sir.

Q. What effect did this have upon the development of junior officers?

A. Well, I just think as a practical matter, with a situation existing like that, the officers under them, the junior officers under them could progress just so far. In other words, they could grow or develop just so far. As a matter of fact, I would think certainly that one of the reasons that these six or seven men that I mentioned left was because of that lack of opportunity.

Q. Did the Nashville Bank and Trust Company have any [fol. 2489] kind of program for the training and development of its younger officers for more responsibility?

A. No, sir, no organized program of any kind.

Q. When Mr. Hackworth came with the bank, did he begin the practice of having regular staff meetings?

A. Yes, sir. I am not sure how soon after his arrival it started. But I would say quite soon after his arrival. And up until, I believe, the middle of 1962 we had regular so-called officers' meetings on Monday afternoon.

Q. Were there any officers' meetings between July 1962 and the time of the sale of the stock by Hill Grocery Company?

A. Not to my knowledge, sir.

Q. Mr. Thompson, did the sale of the stock of Nashville Bank and Trust Company—that is, the controlling interests by Hill Grocery Company—have any effect upon the morale of the officers and employees at Nashville Bank and Trust Company?

A. Well, of course, the sale of the stock was totally unexpected as far as the personnel was concerned. Naturally that created a great deal of uncertainty. I would have to say that because of that uncertainty I think there was just a general unsettled feeling among all the personnel because we really didn't know what the future held in store.

Q. How long did that uncertainty continue?

[fol. 2490] A. Well, I say we were still in that period of uncertainly when the merger plans were announced: and of course that gave us a much—you might say a much more reason, a much more understanding, of which direction we were taking.

But during that period I say there was considerable uncertainty and unsettled condition among the people.

Q. After the merger was announced did you receive offers of positions with other Nashville banks?

A. Yes, sir.

Q. How many?

A. Two.

Q. Without the stabilizing influence of the merger, would either or both of these offers have been of serious interest to you?

A. Mr. Farris, I would have to say that I gave a great deal of thought to both of those offers. However, after some real prayerful consideration, I realized that the merger offered for me certainly a greater opportunity and a greater challenge, and particularly an opportunity to stay with the Trust Company and stay with those people who I had been with for so long and who meant so much to me.

Q. Did any other officer resign about that time?.

A. Yes, sir, Kirby Primm, approximately around the first of February.

[fol. 2491] Q. Did he move any business to another bank?

A. Yes, sir, he did. I understand he has testified that he moved a considerable amount. Certainly he moved some business with him. It would be impossible for us to sort of pinpoint exactly which accounts, but he undoubtedly moved business with him.

Q. Did other people aside from Kirby Primm solicit the customers of Nashville Bank and Trust Company during that period?

A. What period?

Q. The period between the sale of the stock by Hill Grocery and the time of the merger.

A. Mr. Farris, that is rather hard to pinpoint that particular time. The only thing we know for sure is that Kirby has certainly since the time he left concentrated on our accounts. Naturally he knew every one of them by name. He had an unusual facility for remembering names and balances.

In our opinion he has spent his entire time since that time working on our accounts.

Q. Did anyone from the Commerce Union Bank, any one or more officers from Commerce Union, solicit your accounts during that time?

A. We are talking about the period since the merger also, are we?

Q. Ever since the sale by Mr. Hill.

[fol. 2492] A. Right. I was trying to pin down the particular period. Certainly since the sale by Mr. Hill and since the merger, I would say that the Commerce Union and the American have gone all out to concentrate on our accounts. I mean, we were obviously sitting ducks in that unsettled climate, both from a personnel standpoint and the customers' standpoint.

Actually prior to that time—and it is undoubtedly in the record—we were quite good customers of Amercan and the Third and Commerce Union; and the climate or the relationship between us was entirely different up until the time of the merger.

As a matter of fact, I think as of January 1, 1964, I think we had around $2,500,000 with American and maybe $1,000,000 or $1,500,000 or better with Third, and three or four hundred thousand with Commerce Union.

They were rather good customers—rather, we were good customers of theirs. Up until that time, I say, our relationship was fine.

Since that time, I mean there has been an all-out effort on the part of both of those banks to concentrate on our accounts since they were as vulnerable as they could be following such a situation.

[fol. 2493] Q. And what marks the date when, so to speak, the honeymoon was over and that solicitation started?

A. Well, certainly the honeymoon was over when the merger plans were announced.

Q. And did any of that start at the time of the announcement of the sale by Mr. Hill?

A. Yes, well, of course that—well, I say, Mr. Farris, I would have to say that the initial—I'll say the very beginning of it would be when Kirby left us.

Q. Yes.

A. Which was, I think, a week after, if I recall, a week after the announcement of the sale of the Hill stock. But I'd have to say it didn't really get underway until after the merger was announced.

Q. Now what was the nature of most of this business Mr. Primm either moved or tried to move? Describe it if you will, please.

A. Well, as I think I told you, it's pretty hard to identify exactly which accounts that he actually moved. There's none of them of course that we could—Kirby had a world of friends, and he took quite a number of personal accounts with him. I'd say certainly the accounts that he tried primarily to move have been the Hill-related accounts which he was so close to.

Q. Now how else did you feel the efforts of your [fol. 2494] competitors during this period between the announcement of the sale by Hill Grocery Company and the time of the merger?

A. Well, I believe during that period, and I believe—as this might probably already be in the record, there were a number of wills withdrawn which we felt from that source, I think Kirby was probably responsible for a few that went with him, but there were a number of wills withdrawn during that period, and of course, as I say, just the general—because of our unsettled condition among our customers, and I say that based on the fact that we got quite a number of calls during that period immediately after Kirby left and more immediately after the announcement of the merger, from our sort of Hill-related accounts wanting to know how was Horace—was Mr. Hill still with us or was he going to move all of his business away from the Trust Company. We got that quite often.

Q. Yes, sir. Did you have any questions by customers with respect to what the future of the Nashville Bank and Trust Company might be? Was there uncertainty among customers at that time?

A. Yes, sir, I think generally so.

Mr. McKenna: Your Honor, could we have the time pinpointed before the merger or——

Mr. Farris: I'm asking him now about the time between the date of the announcement of the sale by the [fol. 2495] Hill Grocery Company and the date of the merger.

The Witness: Right. That's the period that I'm talking about.

Mr. Farris: That's the period he's talking about.

The Witness: That was the real unsettled period.

By Mr. Farris:

Q. Now, Mr. Thompson, during Mr. Hackworth's tenure as president of Nashville Bank and Trust Company, did that institution concentrate on seeking any particular type of customer?

A. Yes, sir. I'd say there were at least two particular categories. Naturally Mr. Hackworth, having had the experience that he had had, his railroad experience, and the success that he had had, had quite a number, a tremendous number of friends in right influential places that were in position to help us, so we naturally worked on those.

Secondly we made a very concerted effort to take advantage of the sort of Hill connection, the Hill influence, that is the people who were doing business for one reason or another with Hill—the Hill interests.

Q. Yes, sir. Now who among the Nashville Bank and Trust officers worked on these accounts?

A. Primarily, actually if we had a new business department, it would be Mr. Buquo and Mr. Primm, and of [fol. 2496] course Mr. Hackworth. As far as this is solicitation of new accounts that I'm referring to, yes, sir.

Q. Now how do you know that the emphasis was on these Hill-related accounts?

A. Well, of course in the first place, just to—for the benefit of the Court, you might know that the Trust Company operated geographically, the trust department and the banking department was altogether. I mean we all sat in the same lobby, in the same bullpen to be frank. I mean you couldn't tell who was working for who, so of course I mean all of us were right close and knew generally what was going on, but more particularly, in these officers meetings that we had each week, I mean the main subject of conversation was what we were doing in the way of new business, and what we could do, and I mean there were constant reports and discussions of various customers that were being called on, so I knew from that that the main effort of Kirby and Buquo were toward these Hill-related accounts.

And now another—I say another thing, it was certainly an indicative sort of thing, the way Kirby was thinking in any event. Each morning for years. I can remember

the bookkeeping department sending down to his desk all the checks of the Hill Company that cleared that day, and of course he ran through them to see and to make certain just who Hill was doing business with and how [fol. 2497] much business he was doing, and of course he had a photographic memory, and he was prepared to use that in the solicitation of business.

Q. Now aside from Hill-related accounts, to your knowledge, was any amount of effort and solicitation placed upon any other category of accounts?

A. I didn't get all of that.

Q. I just said was any amount of effort in solicitation placed upon any other category of accounts?

A. That is other than——

Q. Other than Hill-related accounts?

A. And the friends—Mr. Hackworth's friends.

Q. Yes.

A. Certainly to my knowledge, there was no organized —let's say no organized effort beyond that. Of course Kirby was calling on friends as was Buquo, but what I'm trying to get across is that the primary effort of our business development was toward those two sources of accounts.

Q. Now in these calls that were made prior to the merger, Mr. Thompson, did you encounter Mr. Benedict or Mr. Midgett or anybody else from First American National Bank?

A. Well, I think I've said that my calls were primarily limited almost exclusively to the trust solicitation.

Q. Yes, sir.

A. Of course I made in the latter years there, immediately before the merger, I made some contacts with [fol. 2498] Kirby, going with Kirby or Buquo. All I can say is that I certainly did not run into Benedict in any—I mean to my knowledge, on any of the calls, and as far as I know, it was not—I mean within my knowledge that did not happen.

As far as trust solicitation, I can certainly say, since I seemed to be the only one that was making any outside calls, I certainly have no recollection of ever running into Bill or anybody at the American. There might have been isolated cases where we might have been calling on a split account, but let's say generally speaking, my efforts

were totally toward the customers who counted the Trust Company as their bank. It was just a waste of time, I learned a long time ago, it was just a waste of time to call on a customer who was tied to another bank. You were spinning the wheels, and we had too many customers of our own we didn't have time to reach, so we just didn't run into them.

Q. Did you encounter anyone from the Trust Department, Commerce Union, or Third National on any of these calls?

A. I'd have to answer it in the same way, as far as the trust business is concerned, we just didn't—we just had too many of our own customers to call on.

Q. Then do you agree that you were engaged in keen competition with First American or Commerce Union prior to the merger in the solicitation of trust business?

A. No, sir, for the same reason. We just didn't [fol. 2499] —I just never considered there was any competition between any of the trust departments. We had more customers than we could say grace over, if we would get out and work on them.

Q. You mean among your own——

A. Among our own customers, yes, sir.

Q. Did you have enough free time outside of the bank to make many calls?

A. I believe—well, I tried to answer that before, Mr. Farris. It was just the same problem, I didn't have as much time as I would like to have had, simply because of never could get quite untangled from my trust customers.

Q. Now did anyone other than Mr. Primm or Mr. Buquo or Mr. Hackworth solicit business on the commercial side of the bank?

A. Well, let's say they were the only—that is Kirby and Mr. Buquo were the only full time solicitors, and of course Mr. Buquo, in fairness to him, had a good many loan accounts, so he in fact didn't have full time, but they were the two primary new business developers. From time to time of course we tried to get all officers involved in a call program which would sort of blow hot and cold. I mean it was one of those things that was pretty hard to maintain, so as a general rule, I would have to say Kirby and Mr. Buquo and Mr. Hackworth were the main sort of commercial solicitors.

[fol. 2500] Q. Now that you are manager of that branch and your bank is a part of Third National, what changes have been made in the solicitation of business?

A. Well, we have—I'd say sort of two programs, if you want to put it that way. We are of course a part of a regular call program. That is our officers are a part of the regular call program of the Third National Bank. That is we are assigned calls right along with the rest of them on a regular basis.

In addition, feeling that our own customers and particularly our larger firm customers need a little more attention possibly than they would get through normal call program, we have a program of our own going just to make certain that we are covering our customers.

Q. Now does that call program involve everyone in the bank?

A. Yes, sir, we try to get all of the officers involved to some extent. Of course some of them are just—are not as well—I say not as well suited for making calls and secondly, they haven't been in contact with these customers as much as the others of course.

Q. Now were you familiar, Mr. Thompson, with the lending policies of Nashville Bank and Trust Company prior to the arrival of Mr. Hackworth?

A. Yes, sir, generally familiar, and as far as I [fol. 2501] can determine, there really was little or no policy as such. From my discussions with our officers over the years, I gathered that no officer with the possible exception of Mr. Young, who was the head of the department, had any actual loan limit or loan authorization. I mean we were primarily a sort of a collateral loan operation, and of course any direct—I mean any unsecured loan would have to be approved by either the committee or the president before it was made.

Q. Now what changes did Mr. Hackworth make in lending policies?

A. Well, of course, Mr. Hackworth was considerably more lenient. In the first place, he backed his officers to the limit. He was willing to let them go ahead and make loans if they were prepared to recommend them, and thought they were good, he would back them up, and because at that time, I mean after his arrival, we started of course getting in some deposits and getting in some firm accounts and with

it of course came some loans so we had to sort of loosen up on our loan policy and start making commercial loans.

Q. Did Nashville Bank and Trust have a credit department at any time prior to the merger?

A. No, sir, we of course discussed it many times, but for one reason or another, we just never got around to it. The closest thing we had a few files which included financial statements of some of our customers, but that was [fol. 2502] the extent of our credit operation.

Q. Now in your opinion, as a banker, is a credit department necessary if you are to operate a competitive commercial bank?

A. Well, certainly based on my experience since the merger, and in having available to us the credit department of the main office and our own credit files, in my opinion, I think any bank, regardless of sie, should have either a credit department or at least a system of credit files. I mean just where it becomes a department, I wouldn't say, but I mean certainly you need as a minimum a credit file system.

Q. Now since the merger, what changes have been made with respect to credit department facilities and credit files at Nashville Bank and Trust Company?

A. Well, of course as I just mentioned, we have available to us all of the facilities of the credit department of the main office. And in addition, in our office, we maintain, you might say, a duplicate credit file on all of our loan customers in excess of a thousand dollars.

Q. Now how, in your opinion, do credit files enable a bank officer to do a better job?

A. Well, of course I'm sure there are a number of ways. Basically, I think of it on two counts. One, better service and one better loans, sounder loans.

In the first place, as far as service is concerned, [fol. 2503] we are constantly receiving calls from our customers asking for credit information on other people in town, and which we can immediately call our credit department and quite often are able to give them some real service.

Secondly, of course, one of the things that has meant so much to us at the Trust Company is having available to us any file complete, up-to-date credit information about a customer who is borrowing money from us. One of our big

problems is heretofore if an officer who had been loaning to a customer happened to be out to lunch or out sick or on vacation, when a man came in, most of the time, nobody had any idea, if he came in to renew a loan or make a new one, had no idea what was behind this man, what his plan was for replacement, and all we could do was renew the loan or turn him down. And in this way, I mean we just got a ready access in a matter of a minute, we've got a credit file available, and that has been a real service to us, and a service to the customer.

Now of course again, I can't overemphasize the value of credit counselling which we, as a practical matter, were never able to give. Now we have available to us the credit know-how of the credit department at the main office, which is available to all of our customers, and then naturally on the reverse side, it certainly enabled us to make sounder loans. I mean obviously the more you know about a man, [fol. 2504] everything that you know about him, the more you know about him, the better chance you have of making a sounder decision as far as the bank's credit is concerned.

Q. And do you from time to time find it advisable and as a matter of practice confer with the senior officers at Third National Bank with regard to loans?

A. Yes, sir. I'm sure I have worried them considerably. We just really, without a credit department, and without real credit experience, and I think I can say that for most of us, we were just not in position really to study or handle a real complicated credit problem. And so, as I'm sure the people at the main office will testify, I've been there many times. As a matter of fact, I think I've got an appointment with Mr. Fleming this afternoon on a couple of matters that we are just not up to handling, and that we need his advice and counsel on.

Q. Now, Mr. Thompson, Government Exhibit 594, which is in evidence, shows that between 1961 and the date of merger, a period of over three and a half years, Nashville Bank and Trust Company approved nine loans in excess of fifteen per cent legal limit.

I will ask you if you will examine that exhibit? Do you have a copy of that with you?

A. No, sir, I don't believe I do, Mr. Farris.

Q. Examine that and state how many borrowers are [fol. 2505] involved in those nine loan commitments.

Is that the—that may not be the right document. I thought it was 594.

[fol. 2506] Mr. Weinbaum: That's the second from the last page.

By Mr. Farris:

Q. This exhibit has a lot of pages. The second from the last page of that exhibit, which refers to the loans approved by Nashville Bank and Trust Company, I believe. Have you examined that? If so, state how many firms were involved in these nine loans.

A. This looks like three firms and one institution. If I counted correctly.

Q. Was Nashville Bank and Trust Company relying upon its own decisions with regard to the credit risk in each of these loans?

Mr. Weinbaum: Your Honor, we object. Mr. Thompson was not a loan officer at Nashville Bank and Trust Company. He was in the trust department. He wouldn't know whether they were depending on their own information or not, Mr. Farris.

Mr. Farris: He may know. I am asking him first if he knows.

Mr. Weinbaum: He hasn't been qualified as a banking employee, Your Honor.

The Court: If he knows, I will let him answer. I think he would have to testify.

A. In that connection I feel that I do know this [fol. 2507] simply as a matter of general information that I have learned since, since these loans were actually made.

I know of one million-dollar loan which, according to the record, was made, which I understand was a participation with another bank or banks. Therefore I think it is reasonable to assume, I am quite certain, that it was based upon the credit, let's say, that was already advanced by other banks.

I would say this generally—and bear in mind that since the merger I have been totally in banking. I think I understand a few of these problems now that maybe I didn't understand before. But I know from my experience since then that we were not prepared to consider and grant individual

credit up to a million dollars without relying on credit already established by other institutions.

By Mr. Farris:

Q. Was there more than one Nashville bank involved in those relationships?

A. Mr. Farris, I can't of my own knowledge—I just assume there were. Inasmuch as we had substantial accounts with all the banks in Nashville, I would guess that we were dealing with more than one, certainly.

Q. Mr. Thompson, to what extent do you believe that a lack of more than one branch affected the ability of Nashville Bank and Trust to compete prior to the merger?

A. In my opinion certainly it was the general [fol. 2508] feeling of the people at the Trust Company that one of our biggest handicaps—if not the biggest—was the lack of branches. Just in my limited experience of solicitation, I realize that you just can't ask even your best friends to drive past six or eight branches of other institutions into the Nashville traffic to do business with you if you really want to serve their convenience.

That's what, of course, we were trying to do. I think it was one of our biggest obstacles to both keeping business and increasing our business—was the lack of branches.

I think the plight of the downtown area and the success of our shopping centers and the suburbs is certainly proof of the fact that people in Nashville expect you to bring the services to them.

Q. Refer to Defendants' Exhibit 14, which is a compilation showing the amount of parking used by bank customers or bank validated parking tickets at Nashville Bank and Trust Company.

Did you prepare that compilation or was it done under your supervision?

A. Yes, sir, I believe I did.

Q. It is already admitted in evidence, I believe. So I will ask you what does that exhibit indicate to you with respect to branches, if anything?

A. Well, as you can see, what we have tried to do [fols. 2509-2513] here is make a study of our garage experience insofar as its use by our customers, both before and after the merger. I believe the way I broke it down

was the immediate twelve months preceding the merger, and the succeeding twelve months, or for the year 1964 as against the year 1965. In both cases, as you can see, the percentages are approximately the same—that is, the percentage off as far as validated tickets are concerned.

This is a matter, of course, that we discussed among ourselves at the bank. And based on that, plus our contact with our customers, we believe that substantially most of this decline in the use of our parking facilities by customers is going to the branches.

Q. It indicates to you that those customers are going to branches?

A. Yes, sir.

* * * * * * *

[fol. 2514] Q. Now, Mr. Thompson, I show you Defendants' Exhibit No. 15, which is the management chart of Nashville Bank and Trust Company. I believe it bears the date of January 1, 1964.

A. I am going to have to look at mine.

Q. You have a smaller copy over there, if you want to refer to that. I will ask you if you worked with the men shown on that chart?

A. Yes, sir.

Q. What is your opinion of Mr. Horace Hill as chairman of the board of the Nashville Bank and Trust Company?

A. Mr. Hill was a real fine gentleman, a generous citizen and certainly a man of great influence and contacts in the community; an excellent reputation.

Q. What is your opinion of Mr. Hackworth as president?

A. Mr. Hackworth was also a fine person, an excellent businessman obviously, as evidenced by his success at the railroad, and certainly came to the bank with a fine reputation and a fine following, and some real influential friends.

Q. What is your opinion of Mr. Kirby Primm as the principal new business solicitor for the bank?

[fol. 2515] A. Kirby, as you know, is a good friend of mine, and in my opinion is a great solicitor, just one of the best in the business.

Q. Do any of these three still continue as officers at Nashville Bank and Trust Company?

A. No, sir.

Q. In your opinion did the loss of two of these men prior to the merger and the imminent loss of another due to illness at the time of the merger have any effect upon the ability of Nashville Bank and Trust Company to compete?

A. Mr. Farris, obviously these three men were key men as far as the Trust Company was concerned. Certainly their loss would have a tremendous effect on the ability of that organization to compete.

Q. According to the management chart, who else among the officers is no longer there?

A. Mr. Young, who was head of the banking department. Mr. Thomas, who was head of the mortgage loan department. Kenneth Brush, who was head of the real estate department. And Lynn Haston, who was assistant trust officer.

Q. In your opinion did the loss of these last four plus the loss of the first three mentioned affect the ability of the Nashville Bank and Trust Company to compete?

A. Yes, it certainly would make our job more difficult, particularly when you consider the fact that if you totaled [fol. 2516] up their years of experience you would find over a hundred and thirty years of experience lost in those four men.

Q. Now, Mr. Thompson, in addition to the loss of those men, the lack of a credit department, the lack of branches, what other factors had a bearing upon the ability of Nashville Bank and Trust to compete?

A. One thing that I—certainly it would have just as a practical matter when you consider the fact that I believe approximately sixty percent of our officer personnel—at the time of the merger that would be—were either fifty-seven years or over. I think just generally speaking, when men are approaching retirement, they are just not quite as aggressive.

Secondly, having lost the six or seven men that I mentioned, we already had some good young men. We are certainly not overloaded with replacements for these people. So I think probably that would certainly have some

effect on our ability to aggressively compete in this market.

Q. Had Nashville Bank and Trust hired any college graduates in the five years just preceding the merger?

A. Mr. Farris, the only one to my knowledge—and I will say that was about five years—we hired John Hardcastle. I don't believe that we have hired anyone since then of that potential.

Actually, I would have to say, too, that I believe [fols. 2517-2522] after we'd hired him, I don't believe we could have kept him without the connections he had with the Hill family.

Q. Mr. Thompson, I show you Defendants' Exhibit 44 which contains the salary scale of Nashville Bank and Trust, and ask you in your opinion did that salary scale have any effect upon the ability of Nashville Bank and Trust to compete in the recruitment of personnel?

A. Mr. Farris, I think that when you look at the salary scale and the years of service, that that chart sort of answers that question. It would be pretty difficult to sell somebody on either coming with the organization or staying with it if they had this to look forward to.

* * * * * * *

Cross-examination.

By Mr. Weinbaum:

* * * * * * *

[fol. 2523] Q. Mr. Thompson, if the head of the banking department, who was Mr. Young at that time, had retired prior to the merger, who would have taken over in the banking department?

A. I really don't know. We had some good men, for instance Mr. Aldred was an excellent man in his job, in his particular job, which was primarily the finance department, if you want to call it that, the finance end of the banking department.

Q. Is Mr. Mathis a competent person?

A. Yes, sir, a competent person, but primarily he has been in operations.

[fol. 2524] Q. He had been in banking for seventeen of his thirty-nine years?

A. Yes, sir. I don't know exactly how long he had been an officer, but not very long, sir.

Q. And you testified, Mr. Thompson, that over the last five years, the Trust Company hadn't hired any college graduates.

In the banking department, over the last eight years, up to January 1, 1964, it's indicated that three men were hired. Do you know whether or not any of those three men were college graduates?

A. Three men were hired in the banking department, sir?

Q. Yes, sir, within the last eight years.

A. The only one that I know of that was a college graduate was John Hardcastle which I already mentioned. The only other possibility would have been Malcolm Puckett, who was hired to manage our branch on Murfreesboro Road. I don't believe he was a college graduate, but he could be, sir.

Q. These three men were hired within the last eight years?

A. I don't know the other one that you are referring to offhand.

Q. I'm just referring to the fact that three men were hired within an eight-year period of time preceding——

[fol. 2525] A. In the banking department?

Q. Yes, sir.

A. I'm not aware of that third man, sir.

Q. Well, Mr. Puckett would be one of them, Mr. Yokley?

A. Could it have been Yokley?

Q. Yokley?

A. The eight years was—I thought he had been with us longer than that, but he's not a college graduate, no, sir.

Q. Excuse me?

A. I don't believe he's a college graduate.

Q. Turning for a moment to the mortgage department, again there was a gentleman advanced in age, ready to retire.

A. Yes, sir, he was seventy-five.

Q. And immediately subordinate to this man was Mr. Williams, is that correct?

A. Yes, sir.

Q. Mr. Williams had thirty-nine years of banking experience, did he not?

A. Yes, sir.

Q. And about six years to go—excuse me, eight years to go before retirement?

A. Yes, sir.

Q. Was Mr. Williams pretty good in his work?

[fol. 2526] A. Yes, sir.

Q. And had the head of the mortgage department retired at that time, would Mr. Williams have been able to move up and run the mortgage department?

A. In all probability.

Q. Yes, sir.

A. At the same time, he had no understudy.

Q. He would have been able to move up and take over the mortgage department?

A. There were only two men in the mortgage department, that would leave only one, sir.

Q. Turning to the trust department, Mr. Thompson, I would like to ask you how the employees of that department compared to the general caliber of employees in the trust department at Third National Bank based on your association with Third at this time.

A. I don't believe that we had as many officers, administrative officers in our trust department as they had at Third. I have not sat down and counted them.

The only observation that I would make that at the time of the merger or shortly thereafter, let's say, the trust department had at least one or two relatively young men in the trust business that—and which I'm sure you are aware of, that trust work takes more than just a little experience to be effective as an administrative officer, [fols. 2527-2537] and they were operating under a handicap to that extent.

* * * * * * *

[fol. 2538] Q. Did you ever make a commercial loan?

A. Yes, sir.

Q. At the Trust Company?

A. Yes, sir.

Q. On more than one occasion?

A. Yes, sir, on more than one.

Q. Were these large loans to the best of your recollection?

A. Yes, sir. Naturally with Mr. Hackworth's consulta-[fol. 2539] tion and approval.

Q. Did you have any credit information available to you?

A. Not much, sir, no sir.

Q. Did you have a financial statement?

A. Most of these loans that we made, that I was familiar with, were on a secured basis—at least what we thought was secure at the time.

Q. Do you know what kind of information was available when unsecured loans were made?

A. A very limited amount. Of course, if you are going to make any type of unsecured loan, they would endeavor to get a personal financial statement, or at least think that they know enough about the borrower to justify it.

Q. How often was the Nashville Bank and Trust Company impeded by the fact that when a customer came in for a loan, the loan officer didn't happen to be around and he would have to come back?

A. I don't know that that was any deterrent, let's say, any real disadvantage. The disadvantage was in the service that we could render to him in not knowing anything about his line, and secondly, in the disadvantage of the officer who had to handle it making the decision of whether or not to make the loan.

That's why I say it is obviously a tremendous advantage [fol. 2540] to have a file somewhere, the complete borrowing history of a borrower. We just didn't have it. For the most part, it was in our minds.

Q. The loan officer that made the loan: Did he have this information somewhere available?

A. In his mind for the most part.

Q. He didn't have any Dun and Bradstreet's financial statements?

A. In a very limited case. As I say again, Mr. Weinbaum, we did not have adequate files. We had a few files on a few borrowers. But, as distinguished from what we presently have, we just didn't have adequate files.

Q. You are not saying, though, that the lack of adequate files was the same as inadequate credit information are you?

A. I don't follow you. The file itself calls for credit information.

Q. What we are wondering, Mr. Thompson, is whether, because there was no routine systematic credit file, loans were made by loan officers with insufficient financial data about the individuals they were loaning money to.

A. Yes, sir, I am sure that they did.

Q. They did what?

A. I am sure that they made them in numerous cases without adequate financial information. That was probably [fols. 2541-2544] primarily due, I expect, to our lack of experience.

* * * * * * *

[fols. 2545-2552] Q. In that exhibit, Mr. Thompson, which you have before you—596—reference is made to discussions with Mr. Hackworth related to your future advancement. I would like to quote begining at the bottom of the page:

> "However, I would have to say that on numerous occasions over the years, while discussing the problems within the bank, Mr. Hackworth made such comments as, 'You might have to worry about this yourself some day,' or, 'If you ever have this job you might have to do this,' and so forth."

You go on to say:

> "Apparently this was his method of encouraging his officers, and I think the fact that my duties and responsibilities were never changed beyond that of a trust solicitor is indicative of the seriousness of such comments."

He did make such comments on numerous occasions, however?

A. Yes.

Q. Do you know whether or not he made such comments to other officers in the bank?

A. No, sir, I would have no way of knowing that. But I sincerely believe that it was his method of encouraging his employees.

* * * * * * * *

[fol. 2553] Redirect examination

By Mr. Farris:

* * * * * * *

[fol. 2554] Q. Now with respect to these large loans which were a million dollars and over, I believe you testified once before with regard to that, that the lack of a credit department or trained credit personnel affected your ability to handle loans of that size.

What other factors would have been involved in the [fol. 2555] Nashville Bank and Trust Company handling loans of that size?

A. Well, just as a practical matter, we extended those lines of credit that we were discussing, those million dollar lines of credit, which I believe went to four—according to our records, that I've seen, went to four borrowers primarily for the purpose of sort of justifying their maintaining some balances with us, but as I say, as a practical matter, if they all came in at the same time and asked for that complete line we just wouldn't have been able to handle it which, I think—as I recall it, our mortgage loan portfolio, a loan, was a right substantial portion of our loan capacity, let's say, and after we consider that and what little we had in finance and so forth, I don't believe our loan capacity could have taken care of these million dollar loan customers, so I point that out as showing it was more in theory than in actuality that we were able to take care of those customers.

Q. And were those loan commitments ever actually used?

A. Only one as far as I can tell from the records.

Q. Yes, sir. Now you were asked about whether Nashville Bank and Trust Company continued salaries while

people were out sick and whether they continued salaries while people performed jury duty or attended funerals or [fol. 2556] other things of that type.

Do you find the same practice in effect at Third National Bank?

A. Certainly, yes, sir.

* * * * * * *

[fols. 2557-2559] Dr. Olin Sharpe Pugh, a witness called to testify by and in behalf of the defendant banks, after having first been duly sworn, was examined, and testified as follows:

Direct examination.

By Mr. Farris:

Q. Dr. Pugh, will you please state your address and your position?

A. 1502 Milford Road, Columbia, South Carolina. I'm presently professor of banking and finance, head of the department of banking and finance, will be head of a department of management, marketing, banking and finance, put together as of July, holder of a chair of banking subsidized and sponsored by the South Carolina Bankers Association.

* * * * * * *

[fol. 2560] Q. Now, Dr. Pugh, have you made a study of the facts and problems involved in this lawsuit?

A. Yes, sir.

Q. Will you describe the study you have made?

A. Well, I have studied the transcript of the 1964 hearings, the application of the Comptroller of the Currency in its entirety, various charts and maps and so forth. I have studied the Nashville economy from the standpoint of general economic and business statement. I have read the transcripts of many of the witnesses here, including Mr. Futoran, Dr. Wolf, Mr. Fleming, Mr. Buttrey, and several others, and I of course have sat here for the last

two days and heard testimony, and I have read dozens and dozens of academic and professional journals and journal articles and Journal of Finance and National Banking Review, various and sundry documents and hearings of Congressional Committees and Congressional reports, and general academic literature on the question of banking markets and so forth, all with reference to this case.

Q. Now, Dr. Pugh, the problem on which all of us [fol. 2561] are working here today has to do with banking and bank competition. Will you tell us what you have to say about competition in the field of banking?

A. Well, just as a beginning point, many observers, in fact all observers that I know that know anything about banking structure, start out with the admission that there is no such thing as pure and perfect competition from the standpoint of economic theory in banking. This is true in Chicago, New York or Nashville.

There is nothing to study in the way of economic theory of the pure and competitive model in the commercial banking industry.

The situation which actually prevails is one of what is loosely called oligopoly, and this is a common or universal situation really, and in general competition in my opinion is more vigorous in American banking today than ever before in its history.

There is a great deal of discussion of the demand deposits as a unique function of banking, but this does not have to be thought of in the same competitive model as perhaps the credit function of banking in extending commercial loans and consumer loans and so forth. There certainly is aggressive competition on the lending side from many, many types of institutions, and agencies, including governmental agencies for that matter, and from [fol. 2562] the standpoint of providing credit—excuse me. From the standpoint of providing the checking account services, one could argue that perhaps two banks with many branches could provide more efficient and effective checking account services to a city the size of Nashville than a dozen banks. There is no reason about arguing about having fifty banks to do this.

Q. Now as an economist, what in your opinion is the public interest insofar as bank mergers are concerned?

A. Well, bank mergers may in many markets provide

stronger banks, and banks which can provide a wider range and more efficient services to the total community, particularly this is a result, if you have a stagnating bank. The public interest is served through better services, more efficient use of the funds which the stagnating bank has been holding, and not using effectively, and you may acquire these funds under the dynamic leadership of an aggressive bank, or banking institution.

From the standpoint of bank failures, which unfortunately there are always a few, but we need not expect many of these situations due to the close examination and of supervisory authorities that we now have, and the fact of course that we now have a deposit insurance which has taken a great deal of pressure off of banks today.

Q. Do you have an opinion with respect to how the public interest is likely to be affected by the merger between Nashville Bank and Trust Company and Third National Bank?

[fols. 2563-2566] A. The banking public, I think, will get the wider range of services and an entire type of service, as well as more effective banking services in the total picture.

I think perhaps, more importantly, the community will have a more efficient and more effective utilization of bank funds to contribute to local and regional business and economic development.

Q. Dr. Pugh, I hand you a three-page document marked for identification as Defendants' Exhibit 48. I will ask you if you recognize it.

A. Yes, sir.

Q. Will you tell us what this document is about and how it was prepared?

A. This is a special study done for this case to look at the service charges of the banks in Nashville, and more particularly the Third National Bank, to develop a comparison with similar banks over a wide geographic area.

* * * * * * *

[fol. 2567] By Mr. Farris:

Q. Dr. Pugh, will you please explain how this document was prepared?

A. Beginning on the week of April 11, I mailed personal

letters to the presidents of sixty-one banks basically in the southern area, in a generalized sense, banks chosen from Polk's Bank Directory, a standard banking source.

I chose banks with deposits above $90 million—most [fol. 2568] of them $100 million, $200 million, $300 million in size—a few billion-dollar banks; but banks generally comparable to the three basic banks in Nashville.

I obtained usable responses from forty-nine out of the sixty-one banks, which is a very, very high ratio. In addition to that, I had several telephone calls and letters from other bank presidents saying that unfortunately they did not feel they could give their present schedules, at least not by mail.

I have with me copies of all the letters. In fact, I have copies of all the responses from the forty-nine banks used.

The Nashville Bank data was sent to me by Mr. Charles Cook, who has previously testified, I believe; and I used the schedules that he supplied from the three large banks in Nashville.

I had working with me Dr. Oliver Wood, assistant professor in my division who worked on this with me. In order to get some systematic method of presenting the data, it was necessary to choose what we might loosely call models as to deposit size and deposit balances and degree of activity. Otherwise you cannot get comparable dollar figures unless you make certain assumptions as to size of deposits and activity in each account.

I chose these sizes before I had the responses from [fol. 2569] the forty-nine banks. Indeed, I chose the sizes before I even knew what Third National Bank's service charges were. So in this regard it is absolutely as unbiased as any study I could make.

It was not designed for any particular purpose other than just to look at the service charges in the Nashville market.

I did talk with bankers in my area as to reasonable assumptions as to deposit activity and balance sizes to help me judge what type account to analyze. It was on this basis that we have three different size accounts—two for individuals and one for what I would call a small business firm.

Q. Will you explain what you did with the answers you received from the forty-eight banks which replied and how their answers were used in compiling this document?

A. I think first perhaps I should explain the size of the accounts in the three individual cases.

Q. Yes, please do that.

A. For the small personal checking accounts, I set up as my assumption an average balance of $225, a minimum balance of $75, with twenty checks written per month, with four items being deposits per month; and if float was ever used in such an analysis, a ten percent of the balance designated as float. This is what I call the small [fol. 2570] personal checking account.

For the medium-sized personal checking account I assumed an average balance of $625, a minimum balance of $325, with thirty checks written per month, with four deposits being made during the month, with six items being deposited and with a float of ten percent of the balance.

What I am calling the bank service charges for the business accounts and aimed at the small business community, I assumed an average daily balance of $2,025, a minimum balance of $525, with 100 checks written per month, with a total number of deposits of fifteen, depositing 250 items, with 50 checks written on the same bank in which the deposit is being held.

I further assumed an average daily float of $500. Using these models, I worked through all of the schedules of the banks in question and calculated the dollar cost to the customer under these assumptions and with these sizes and this type of activity.

Q. Mr. Pugh, will you, if requested, make available to Plaintiff's counsel all the letters received by you in your inquiry for the purpose of investigation and cross-examination?

A. Yes, sir.

Q. Do you have those letters with you today?

A. I have. As an aside, I should hope I could get them back; but they are here.

[fol. 2571] Q. Will you then explain what these studies indicate to you with respect to the Nashville banking market?

A. The Nashville banking market as measured by the

major banks in the city compares very favorably in terms of lowness of cost in service charges to the public: In the case of the personal accounts, taking the medium-sized personal checking accounts, the city stands No. 16 out of twenty-one cities studied.

In the case of the small personal checking accounts, the city also stands 16 in the twenty-one cities studied.

In the case of the business accounts, Nashville is 21 in a list of twenty-one. In other words, at the bottom. This is measuring from No. 1 as the most expensive, to No. 21 as the least expensive.

So, from the standpoint of the general impact on the Nashville banking market and customer service charges in general, there is certainly no evidence of what you might call exploitation of customers due to lack of competition in the Nashville market.

Q. What does this indicate to you with respect to the fact that the three largest banks in Nashville have between them substantially over ninety percent of the total business?

A. Certainly directly in reference to this study it indicates that Nashville is a highly competitive market and [fol. 2572] provides customer services at very realistic or very reasonable, indeed if not low, cost.

With reference to the Third National, of course, the service charges are actually below the city averages in all cases.

Q. Dr. Pugh, I wish to refer now to Defendants' Exhibit No. 51. I will ask you if you will look at that and state what it is and the source of the information and where it was prepared and why it was prepared.

A. I have a copy, Mr. Farris, but it will take me a second to locate it. I have it.

Are you asking about 51 first, Mr. Farris?

Mr. Farris: Before I do that, if the Court please, I would like at this time to move Defendants' Exhibit No. 48 into evidence, subject to the right of the Plaintiff's counsel to reserve his objections and reserve his cross-examination on it until some later date, if he desires to do that.

The Court: Will there be any objection?

Mr. Minicus: We would appreciate the opportunity to do that.

The Court: It will be admitted, subject to that qualification.

(Defendants's Exhibit No. 48 was received in evidence.)

[fol. 2573] By Mr. Farris:

Q. With respect to Defendants' Exhibit No. 51, Dr. Pugh, state what that exhibit is.

A. This is a compilation of the real estate loans as a percentage of total loans and discounts for the Nashville Bank and Trust Company, the Third National Bank, and all insured banks in the State of Tennessee for the years December 1959-December 1963.

In the lower half of the exhibit are the dollar amounts of these real estate loans for the two banks in question and all the insured banks in the State of Tennessee.

Q. What is the significance of showing a percentage of real estate loans to total loans for comparative purposes?

A. In my opinion, the Nashville Bank and Trust Company was not an aggressive commercial and industrial lender, and to the degree that it was holding varying amounts—41 to 36 percent—of its total loans as real estate loans, it was acting as an insurance company, a savings and loan association, or other type of mortgage institution.

Whereas the Third National has an almost insignificant amount of such mortgage loans. It is using its funds as a commercial institution in the local and regional markets.

[fol. 2574] Mr. Farris: If the Court please, we move into evidence Defendants' Exhibit No. 51.

Mr. Minicus: If Your Honor please, this and probably the next one or two succeeding exhibits, I did not receive until nine o'clock this morning. I have done the best I can in checking them out. We haven't thoroughly been able to check out the accuracy of the information.

In fact, we haven't begun on that yet. I would like to cross-examine on them to save time. But I would like to reserve any motions that may depend upon the accuracy of these exhibits.

The Court: I will admit it in evidence subject to your right to move to strike.

(Defendants' Exhibit No. 51 was received in evidence.)

By Mr. Farris:

Q. Dr. Pugh, I refer now to Defendants' Exhibit No. 52. I will ask you to explain what that shows and what the significance of that exhibit is.

A. This is a combination of commercial and industrial loans and loans to individuals for personal expenditures as percentages of total loans and discounts of the Third National Bank and Nashville Bank and Trust Company as of December of the years 1959-1963, calculated from the December call reports of the two institutions.

[fol. 2575] The commercial loans are primarily what most people call the business loans of the bank. The individual loans for personal expenditures is the standard FDIC classification and reporting system, and is what most people would call consumer loans.

It includes all installment loans for personal consumption purposes and single-payment loans to individuals and in many cases—in fact, most cases—these are what we would call consumer credit.

Again, you will note the fact that the Third National is quite heavy in commercial loans as a percent of all loans. It is also quite heavy in individual loans as a percent of all loans.

I combined the two just to give a good working comparison of these two major categories of lending by the two institutions in question here. And the combined percentages, of course, for the Third National are much more favorable in my opinion, favorable from the standpoint of the community, than for the Nashville Trust Company.

Mr. Farris: If the Court please, subject to reserving to Plaintiff's counsel his comments with respect to Exhibit 51, we move now Defendants' Exhibit 52 into evidence.

The Court: It will be admitted, subject to a motion to strike.

[fol. 2576] (Defendants' Exhibit No. 52 was received in evidence.)

By Mr. Farris:

Q. Dr. Pugh, I will ask you now to refer to Defendants' Exhibit 53. I will ask you to indicate what that exhibit shows and what its significance is.

A. This is a study in the changes in the banking structure in the United States and in the State of Tennessee and Davidison County for the years 1957-1965. The data are taken from the Federal Reserve and the FDIC for the State of Tenessee and for the United States.

The data for Davidson County were obtained from the Polk Business Directory service. I have tabulated the banks which were beginning operations in each of these years in the three separate markets, the number of mergers and absorptions and liquidations, the total banks at the end of each period, the increase in branches during each year, and the total branches at the end of the period.

The net impact to me is that banking in Tennessee has been very stable from the standpoint of mergers and absorptions and liquidations, as is true of Davidson County; and that we have had, of course, in the nation and in Tennessee and in Davidson County a significant increase in branches during all of these years.

[fol. 2577] Mr. Farris: If the Court please, we move into evidence Defendants' Exhibit No. 53, subject to the right of Plaintiff's counsel to move to strike in the event he finds any information therein incorrect.

The Court: It will be admitted on that basis.

(Defendants' Exhibit No. 53 was received in evidence.)

[fol. 2578] Q. Now, Dr. Pugh, in consideration of the study you have made of the Nashville banking market and considering further that prior to the merger between Third National Bank and Nashville Bank and Trust Company, the three largest banks in Nashville had between them approximately 93 per cent of the deposits held by banks in the county, and after the merger the three largest banks held between them approximately 98 percent of the deposits held by banks in the county, will, in your opinion, this increase in market shares have a probable adverse effect upon competition?

A. No. Personally, I do not believe that concentration figures taken alone are a sufficient measure of competi-

tion. It is the operating results, it is the degree of competition, the type of competition that really matters. Public regulations and alternative sources of credit make raw data such as concentration ratios quite questionable, if not meaningless, and I join with many other students of industrial structure such as Joel Dean and others, in arguing that it is not the number of competitors but the degree or type of competition which will serve the public interest.

Q. Thank you, sir.

Now considering the factors already mentioned in that question just before asked and answered, and considering further that in the Nashville area are located the main offices of seven savings and loans associations with total assets [fol. 2579] of more than 269 million dollars or more than the total assets of the third largest bank in Nashville; a substantial number of credit unions with total assets of 37.9 million dollars, or only five million less than the deposits of Nashville Bank and Trust Company prior to the merger; and life insurance companies with total reserves of more than 1.2 billion dollars, or more than the total of all of the bank deposits of Davidson County combined; and that each of the foregoing is in competition with banks and with each other for the savings dollar; and that further these same savings and loan associations have loans outstanding of more than $229,000,000 in an area up to one hundred miles beyond Davidson County; that these same insurance companies have outstanding loans in excess of $677,000,000; that these same credit unions have outstanding loans of more than $33,000,000; and that a substantial number of industrial finance company offices located in Davidson County have outstanding loans in excess of $36,900,000; and that major independent finance companies in Davidson County have more than $54,000,000 in loans outstanding; and that each of the foregoing compete in one or more respects with banks and with each other in the making of loans; and further considering that two of the largest investment firms, including the second largest in the nation, are located in Nashville as well as offices of other major investment [fol. 2580] houses; and further considering that subsequent to the merger, Third National Bank had only 15.52 per cent of the enumerated deposit shares or reserves,

14.88 per cent of enumerated loans, and 14.46 per cent of total assets of the aforementioned financial institutions; not to mention sales finance, industrial loan companies, and investment and brokerage house totals; and finally considering that Nashville Bank and Trust Company's pre-merger assets represented less than 1.7 per cent of the aforementioned assets, in your opinion, did the merger of Third National Bank with Nashville Bank and Trust Company bring about the elimination of a major or a significant competitor?

A. No, I do not think so. As just noted previously, I do not feel that any single ratio or figure is an adequate measure or substitute for analyzing the actual market and its operations. And under the circumstances that you have recited, indeed I think it is very logical and likely that competition has increased in the banking market rather than decreased.

Q. In your opinion—you have already answered that though.

You wouldn't say then that the merger resulted in a probable substantial lessening of competition?

A. No, I would not. As a part of this, it is my opinion that ~~in~~ a city of the size of Nashville, the type of [fol. 2581] banking market that is here, that you will have more aggressive competition with three or four banks than you will have with twenty or thirty banks. Each bank is big enough to matter. It knows its status in life; it has the incentive to really go out and become aggressive and competitive, and I think in the case in question that you have added to the competitive fuel so to speak rather than detracted from it.

Q. Dr. Pugh, statements have been made during the course of this trial to the effect that because demand deposts are essentially cost free, commercial banks have a competitive advantage over sales finance companies.

Do you agree?

A. I do not. I think this is a great misconception. In the first place, all companies in a private enterprise society have the cost of capital, including banks. There are no cost-free deposits. The demand deposits also have a cost. The banks pay for all of their funds, including the equity fund.

I believe it has been testified here that demand deposits may have a cost of three per cent, which I certainly accept as a conservative measure personally.

According to the Federal Reserve study, finance companies in 1960 were borrowing only 21 per cent of their total funds from commercial banks. This was the most complete and comprehensive study that we have to go on. [fols. 2582-2584] This is in the Federal Reserve Bulletin in October, 1961.

Also there is an article in the June, 1965, bulletin which states that banks are supplying less and less of finance company total financing funds, available funds. The finance companies are borrowing at wholesale; they are basically lending at retail. The markets which most finance companies service are not precisely the same markets that the banks are servicing although there is a great deal of overlap, overlay in customers, and banks lend to the national sales finance companies at exceedingly favorable rates.

Indeed, in many years, in the past, sales finance companies have been able to borrow from banks at rates below the so-called prime rate—this is not true currently, but it has been true in the past—and the basic cost to the sales finance company is in the administrative cost, administering the loans, putting them out, servicing them, and so forth, and absorbing the capital losses, and not the relatively small interest payments which they make to the commercial banking system.

All in all, I do not think that the sales finance companies are at any great disadvantage. Indeed the profits of sales finance companies, year in and year out, at least of the larger sales finance companies, year in and year out, have averaged above commercial bank profits using equity as a base of comparison.

* * * * * * *

[fol. 2585] Q. The next question then is statements have been made during this trial to the effect that the public interest might be served when a struggling bank, in order to overcome competitive handicaps such as lack of branches follows the practice of making loans which are unsound from a banker's point of view.

Do you agree?

A. I do not. Unsound loans must ultimately threaten the solvency of a bank. Further, the word may get out in the community so to speak that the bank is not operating effectively, efficiently, and safely. Hence you may actually lose deposit dollars as they are transferred to the so-called sound banks in the area.

Furthermore, the stockholders will worry, and they will not reinvest funds or buy stock in the organization, and the net effect may well be that the banker who thinks he is engaging in community development by unsound lending will have fewer dollars to lend to anyone, and so the [fol. 2586] entire community may be harmed in this way.

Some people are inclined to argue, well, you can make poor loans and charge high rates and cover up from a banking standpoint, but it is my opinion this is not a valid argument. In the first place, the Internal Revenue Service, restricts the bad debt reserves for banks quite vigorously. I believe it's 2.4 per cent at the present time. Furthermore, you have usury laws.

You have the entire tradition of the commercial banking industry, a tradition which keeps or restrains banking high rates on business loans, and all in all, it is not possible to charge enough for it from a commercial bank standpoint to provide for the losses or the bad debts which you would have through unsound or marginal business lending. So all in all, I think this is not a valid argument for a commercial bank.

Q. Now I hand you Defendant's Exhibit 43—I believe it's already been admitted in evidence. Now we have a chart with respect to that, do we not?

I ask you to examine that exhibit and state whether or not this chart represents the same data that is on your exhibit in smaller, more contracted form?

A. Yes, it is.

Q. Will you tell us what that chart shows and what is its significance to you as an economist and with respect to this—to the problems we are exploring here on this [fol. 2587] bank merger.

A. This is the traditional loan to deposit ratios for the Third National Bank, the Nashville Bank and Trust Company, and for all banks in Davidson County as of December of the years 1955 through 1964.

It may be noted that the Third National Bank ratio is consistently above the county average and much above the Nashville Bank and Trust Company average as of these dates. This is the standard measure of how aggressive a lending institution you have in a particular bank or within a banking market.

It represents the support of a commercial bank to its market both locally and perhaps regionally. It is the best measure that students have to check into the changes in commercial banks from the lending standpoint, and has great implication from the standpoint of industrial and economic developments.

Q. Does that loan to deposit ratio of the Nashville Bank and Trust Company include computation of the amount it has invested in real estate loans?

A. Yes, it does.

Q. And if the real estate loans were removed from both of those—well, first, I'll ask you if the real estate loans were removed from the Third National line on the chart, would it make any difference?

[fols. 2588-2601] A. Very slight difference.

* * * * * * *

[fol. 2602] Q. Now, Dr. Pugh, from your study of this case and your personal observation of the banking market in [fol. 2603] Nashville, and if you assume that prior to the merger the three largest banks with headquarters in Nashville had among them deposits totaling approximately ninety-three percent of the total of commercial bank deposits in Davidson County;

And if you consider that after the merger the three largest banks had among them approximately ninety-eight percent of bank deposits in Davidson County;

And if you consider that the deposits of Nashville Bank and Trust Company amounted to only approximately five percent of the commercial bank deposits in the county, and that it operated only two out of more than fifty banking offices located in the county;

And if you consider that Nashville Bank and Trust Company enjoyed a fair growth during the period from 1955 to 1960 under the leadership of a strong president who has

since passed away, and that its growth between 1960 and the date of the merger had slowed down considerably;

And in IPC deposits had actually declined;

And if you consider that the First American National Bank was the largest bank in the market in Davidson County prior to the merger and has continued to grow and to be the largest; and that Commerce Union Bank, the third in size, has increased its share of total deposits and assets since the merger;

And if you consider that the Capital City Bank, which [fol. 2604] is now the fourth bank in size, has continued to grow and now has total assets in excess of ten million dollars;

And if you further consider that Nashville Bank and Trust Company at the time of the merger had a management succession problem which would have required the replacement within a short period of time of not only the chairman of the board and the president, but three out of five of the executive and trust committee, and three vice-presidents who were department heads; and that a number of its other officer personnel were advanced in age; and that its two most capable officers were trained in trust administration rather than in commercial banking;

I ask you, what in your opinion is the effect of the merger of Third National Bank and Nashville Bank and Trust Company upon competition?

A. In my opinion you have a healthier, more progressive competitive market as a result of this merger in this particular situation, on the details you have outlined. I think you have a healthier, more competitive situation from the standpoint of better management, more dynamic leadership in the banking field.

I also feel this way because of some points I made a minute ago, that a bank that is growing, that has the reputation of being dynamic and aggressive, already better people coming into it, into the ranks, who will add to the stature [fol. 2605] and competitive desire of the total institution.

Q. Dr. Pugh, considering the factors enumerated in the question just given, in your opinion was Nashville Bank and Trust Company prior to the merger a major competitor?

A. No, I do not think so. The Trust Company was not a dynamic institution, at least in its later years. It was not

an innovator or a leader in the local banking markets. It did not in a sense set the tone of the local banking market.

So in this way the bank was not a major or a significant competitor.

Q. In your opinion did the marger bring about a substantial lessening of competition?

A. I do not think so, basically for the same reasons I just mentioned.

Q. Did it result in Third National Bank acquiring an undue share of the market?

A. No, I do not think so. Third National has grown through what economists would call natural market forces, not through mergers historically. It has been an innovator in the banking market sense and it has grown through aggressive competition and gaining the acceptance of the business and the public.

So there is no implication here that it has grown by collecting together a large number of other banks over its history.

[fol. 2606] Q. From your observation of trends in banking today in cities such as Nashville, can trust departments of banks over the long pull continue to hold their position in the market without a connection with a strong commercial bank?

A. In my opinion, no. The trust department and the commercial department must work together in the present banking markets. One in a sense feeds upon the other, or assists the other.

In this regard a trust department or a trust function standing by itself is at a great disadvantage in recruiting or obtaining trust business or trust accounts.

Q. Dr. Pugh, are the convenience and the needs of the community and of the Central South better served by local banks which are larger and capable of keeping loans for industry within the local area rather than by letting industry go north and east for credit?

A. The needs of the community are best served by having institutions in the area that can provide adequate business financing. This has been a tremendous problem of the South for at least a hundred years, if not longer. The South has always been known as a capital-poor or capital-deficit community or area.

The advantages are many, including the simple advantage of having the interest income at home and reinvested and [fol. 2607] keeping economic growth and economic development.

From my personal knowledge over the years too many businesses in the South have automatically turned to the large capital markets of New York, Chicago, Philadelphia, and so forth, for their large financing, and have bypassed southern institutions. And only in fairly recent years have southern institutions become large enough, have sufficiently large lines of credit, to really finance business enterprises in their lines of expansion and servicing the overall community.

It is to be borne in mind, of course, that business loans not only assist the particular borrowing business or corporation; they assist an entire community and the economic good will spread out over many, many people that are not directly involved in the particular loan or patricular business that is being financed.

[fol. 2608] Q. Now, Dr. Pugh, I ask you to direct your attention to Government Exhibit 543. Do you have a copy of that in your possession?

A. I believe so, yes, sir.

Q. Now what does this exhibit indicate with respect to the size of the accounts at Nashville Bank and Trust Company?

A. This exhibit indicates that of the IPC demand deposits, as of December 31, 1963, that 70 per cent of the dollar volume of these deposits were held in accounts of fifty thousand and above.

In the case of the Third National, it shows that fifty-eight per cent of such accounts were held in deposits above fifty thousand.

This is an indication that a number of accounts, in fact a very large proportion of the dollar volume involved in these accounts are sufficiently large to be of interest and significance not only in a regional market in the sense of New Orleans and Birmingham and Memphis, and all around, but even of interest perhaps in the national banking markets and to this degree, you are forcing attention to the fact that you are holding accounts which spring from a wide geographic area rather than from a strictly local banking market, as some people discuss a banking market.

The fact, for example, that banks here in Nashville, including the Third National, I believe, hold deposits of [fol. 2609] such national firms as Genesco, Avco, Ford, insurance companies local and otherwise, these accounts are obviously national accounts, they are not local accounts.

Q. And, Dr. Pugh, in determining a geographic area in which to measure the effect of a merger upon competition, would you agree that the fact that approximately ninety per cent of one of the bank's deposits originated within a single county and that the state law limits branching to the county within which the home office of a bank is located, that those factors alone should be the basis for determining the geographic area?

A. I do not. Particularly not in a city the size of Nashville. Perhaps in a town of three to five thousand, which is strictly an agricultural area, and there is no business contact a hundred miles down the road, so to speak, this may have some meaning, but in a market such as this, you are drawing funds from a very wide geographic area, not from a local market.

Q. And are banks in a wide area interested in the customers located here, because of the size of those customers?

A. Most assuredly.

Q. Then, Dr. Pugh, if we attribute seventy per cent of the deposit volume of Nashville Bank and Trust Company as being of sufficient size to be placed in a regional market, how much in dollar volume of their deposits does that leave [fol. 2610] which would be involved in a local market?

A. It would be; Mr. Farris, it would be the seventy per cent of the IPC demand deposits that we are discussing?

Q. Yes, sir.

A. And the deposit volume of the Third National—I'm afraid I'll have to check a figure. It seems to me it was—I'll have to check the figure, sir. Just a moment.

It would leave approximately 6.6 million out of 18.6. That would be below the fifty thousand dollar level, six out of eighteen.

Q. Thank you, sir.

Now, Dr. Pugh, do you have in your possession Defendant's Exhibits 49 and 50? They refer to——

A. Yes, sir.

Q. State what those two exhibits indicate and the purpose of them being prepared.

A. Exhibit 49 is a table showing the ratio of U.S. Government securities to total deposits for the Nashville Bank and Trust Company, the Third National Bank, and for all insured banks in the State of Tennessee, as of December, 1955, 1964.

The following exhibit is simply a chart of the data presented in the table. The point of the exhibit is to demonstrate that the Nashville Bank and Trust Company, throughout the period '55 through December, 1963, con- [fol. 2611] sistently held a much higher proportion of its deposits in the form of U.S. government securities than did the Third National Bank or the average of all insured banks in the State of Tennessee.

Hence this indicates that a smaller proportion of the deposits available to these banks, in the case of the Nashville Bank and Trust Company, a smaller proportion of their dollars were going out into business lending, consumer lending and other traditional commercial banking functions.

It is also an indication of a less aggressive lending institution, in other words.

*   *   *   *   *   *   *

[fol. 2612] Cross-examination.

By Mr. Minicus:

Q. Mr. Pugh, I believe that Defendant's Exhibits 34, 38, 35, and 39, 36 and 40 were compiled under your direction.

A. I'm at a disadvantage of not having them readily available, sir. I have prepared numerous exhibits.

Q. Perhaps your counsel will supply you with copies of those; I believe we only have one copy.

A. (Documents were furnished to the witness as requested.)

Q. Now, these tables appear to run to the same methodology, however one—the first two that I mentioned, 34 and 38, are addressed to assets; 35 and 39 are addressed to loans and discounts; and 36 and 40 are addressed to total deposits. Is that correct, sir? Is that the way your tables are now?

A. Yes, sir.

Q. Now if you will direct your attention to Defendant's Exhibit 34, I note from that that during the period June, 1956, to June, 1960, an increase in the deposits of Nashville Bank and Trust Company. What was the amount of that increase, Mr. Pugh, Professor Pugh?

A. You are referring to 34?

Q. Yes, sir.

[fol. 2613] A. The measure is total assets, sir.

Q. Yes, sir, assets. Did I say deposits?

A. Yes, sir.

Q. I would like to correct that to read total assets.

A. The increase for the Nashville Bank and Trust Company was 46.55 percent in the 1956-1960 period.

Q. And what was the dollar value of that increase?

A. Well, approximately fourteen million dollars, if you don't mind an approximation.

Q. And during the second period from June, '60, to June, '64, what was the increase in Nashville Bank and Trust Company?

A. The increase in dollar amounts from '60 to '64 was approximately eight million dollars or twenty percent.

Q. Now I notice when you rounded those figures out, where you had the third numeral under five you raised it to the next thousand upward, and when you rounded out the second figure, which was above five, you dropped it down to the next numeral afterwards.

How do you round out your figures, Mr. Pugh

A. When I——

Q. Shouldn't that be more properly thirteen thousand dollars and six thousand dollars, if we are going to round out the numbers?

[fol. 2614] A. Thirteen and six? It should be 8.6 in the last——

Q. 8.6 what, sir?

A. Million increase.

Q. Thank you.

A. 8.6 million.

Q. And the first one should be what?

A. 13.4—no, excuse me. I'll have to make a quick calculation.

Q. I'll accept 13.4; that's what I have.

So then both of those periods, the asset value of the Nashville Bank and Trust Company increased, did it not?

A. In dollar amounts, yes, sir.

Q. In either of those periods, did the tangible assets decrease in any way?

A. At various times during the period, yes, sir, but of course as of the magical date in June, as shown here, it is higher in——

Q. You selected the date, didn't you, Dr. Pugh?

A. Yes, sir, I did, from your data.

Q. Do I have any data setting out these two periods?

A. Yes, sir.

Q. As such are computations made on the basis of those two periods?

A. No, sir, not as the computation of percentages.

[fol. 2615] Q. Let us direct your attention, Dr. Pugh, to Defendant's Exhibit No. 35.

Now what does this table purport to portray?

A. The growth of total loans and discounts of banks in Davidson County, Tennessee, June, '56, June, '60; from June, '60, to June, '64.

Q. And what was the increase at Nashville Bank and Trust Company during that first period?

A. The dollar increase from the '56-'60 period was 7.6 million dollars.

Q. And during the second period?

A. 5.2 million dollars.

Q. So during both periods, as far as loans were concerned, in the Nashville Bank and Trust Company, they did increase, did they not, sir?

A. They did increase in dollar volume.

Q. Now if you will direct your attention to your Exhibit DX-36, what does that portray, sir?

A. Growth of total deposits of commercial banks in Davidson County, Tennessee, June, '56-June, '60; June '60-June, '64.

Q. And during that period, during the first period that you have selected there, what was the progression of total deposits in Nashville Bank and Trust Company

A. The increase during the 1956-1960 period in dollar [fol. 2616] amounts was approximately 12.8 million. The increase from June, '60 to June, '64, was approximately 7.2 million.

Q. And in point of those periods then, the Nashville

Bank and Trust Company showed an increase in total deposits, is that correct?

A. An increase in dollar deposits, yes, sir.

Q. Now if you will turn back to Exhibit 36, what was the percentage gain in loans at the Nashville Bank and Trust Company during your second period?

A. Exhibit 36, sir?

Q. Yes, sir. That is for—let let us turn back to 35 for loans and discounts.

A. Loans and discounts. Yes, sir.

Q. Now what was the percentage gain shown on your chart?

A. For the Trust Company?

Q. Yes, sir.

A. 7.57 percent.

Q. I'm talking about the second period now?

A. Oh, I'm sorry. 29.86 percent.

Q. What does that average out to a year?

A. Seven to seven and a half percent.

[fol. 2617] Q. Seven to seven and a half percent. Do you know the gain in gross national product during these years?

A. The increase in gross national product?

Q. Yes, sir, for each year during those years.

A. Obviously I do not know it precisely. As a rough approximation, I would guess about six percent.

Q. In other words, this gain in loans and discounts at Nashville Bank and Trust Company was greater than the gain in gross national product during this same period?

A. If it is fair to make such a comparison, yes sir.

Q. I now direct your attention, Dr. Pugh, to Government Exhibit or Defendants' Exhibit 37.

A. Yes, sir, I have 37.

Q. Will you explain to us, Dr. Pugh, what the purpose of this exhibit is?

A. To show the growth in IPC demand deposits in commercial banks in Davidson County for the period June 1956-June 1960; June 1960-June 1964.

Q. For the purposes of our discussion of this, I would like to have before you Government Exhibit 1004, which shows the growth in IPC demand deposits year by year throughout that period. As I view your exhibit, Defendants' 37, for the Nashville Bank and Trust Company demand

deposits you have selected June 1960. What was that figure [fol. 2618] in June 1960, Dr. Pugh?

A. For the Nashville Bank and Trust, June 1960, $19, 981,000.

Q. That was the highest figure that Nashville Bank and Trust Company had reached up until that time in demand deposits? Is that not true, sir?

A. Of the data shown in your table, yes, sir.

Q. From that peak figure you have gone to 1964—from June 1960 to June 1964—for your second period. On the basis of that you found a difference of minus sixty-three percent in the growth of demand IPC deposits of Nashville Bank and Trust Company between the first and the second period.

Actually from June 1960 to June 1964, demand deposits of the Nashville Bank and Trust Company actually declined.

Will you move back one year on Exhibit 1004 to June of 1959 and compare the dollar value of demand deposits in June '59 with those of June '64, and what happens?

A. Comparing June 1959 with June 1964?

Q. Yes, sir.

A. There is a slight increase in deposits as of June 1964.

Q. What is the amount of that slight increase, sir?

A. Well, I guess it is $800, 000 approximately.

[fol. 2619] Q. Is that slight?

A. In a $45 million or $50 million bank, it is relatively minor, yes, sir.

Q. What are their total demand deposits?

A. Their total IPC demand deposits?

Q. Yes.

A. Their total IPC demand deposits were $19 million.

Q. When? In 1964?

A. June 1964, $18,951,000. But may I correct——

Q. Wait just a moment, sir. On the basis of $18,000,000, you don't think $900,000 is a very substantial figure. Is it slight?

A. Sir, in banking circles or in a particular bank, deposits often fluctuate a great deal in the course of thirty days.

Q. Yes, sir. Then how do you explain taking the peak figure that was shown on a particular day and making all your computations on the basis of that figure?

A. I chose the call date nearest to the effective date of the merger and spread on the table.

Q. Let's look at what happened the next year. Look at June 1961, if you will, Dr. Pugh. What were the demand deposits in the Nashville Bank and Trust Company in June 1961?

A. $18,078,000.

Q. What were they in June 1964 again?

[fol. 2620] A. $18,951,000.

Q. So in the three-year period, what happened to the demand deposits of the Nashville Bank and Trust Company?

A. An increase of approximately $900,000.

Q. Let's look at June 1962, and what were they?

A. $17,638,000.

Q. How much did they increase in the next two years?

A. Approximately 1.3 million dollars.

Q. So, with reference to all the years on either side of the figure that you selected, there is a very marked increase in demand deposits, is there not, at Nashville Bank and Trust Company coming down to 1964?

A. There are changes for each period, yes, sir.

Q. These other charts that relate, these are charts in GX-41, and others I mentioned, are merely pictorial presentations of the tables we have just discussed. Is that correct, sir?

A. Yes, sir.

Q. Will you now refer to Defendants' Exhibit No. 42, Dr. Pugh.

A. I may have it, but I don't have the number, Mr. Minicus.

Q. Will you describe the purpose of this tabular presentation?

[fol. 2621] A. It is a presentation of the loan-to-deposit ratios of the Third National Bank, the Nashville Bank and Trust Company, and for Davidson County, Tennessee.

Q. What is the purpose of it, sir?

A. It is simply a presentation year by year of a standard measure of banking performance that is utilized by all of the supervisory authorities and all students of banking.

Q. It is a standard form?

A. A standard form, yes, sir.

Q. What is this standard form designed to show?

A. It portrays many things: The liquidity of banks in certain circumstances; the aggressiveness in banking, in lending and providing for the financing needs of the respective banks' communities.

It portrays the overall growth of financing to business and so forth.

Q. And the higher the ratios, the more the growth, the more the aggressiveness? Is that the theory?

A. That's the theory, yes, sir.

Q. Will you let your eye run down the column that you have for the Nashville Bank and Trust Company and tell me in which direction those ratios through the years from 1955 to 1963 were consistently going?

A. They were increasing; but of course the ratios for [fol. 2622] the whole nation have increased tremendously in this period.

Q. Then will you run your eye down the column for Third National Bank and tell us what happened there?

A. They were increasing also.

Q. How much did Third National Bank increase?

A. From December '55 to December '64 they increased 10.7 percent.

Q. How much did Nashville Bank and Trust Company increase in December '55? Let's make that December '63, if you will, Dr. Pugh, because the Nashville Bank and Trust Company figures ended December '63. Then what percentage of increase do we get for Third National Bank?

A. It would be 8.6 percent, I believe.

Q. How much during that same period did Nashville Bank and Trust Company increase?

A. It increased from approximately 40 to 50.9, or very close to 10.9 percent.

Q. So then, if this measures aggressiveness, Nashville Bank and Trust Company relative to Third National Bank was showing somewhat more aggressiveness. Is that correct, sir?

A. Not in my opinion, sir.

Q. I am talking about your chart here.

A. The percentages——

[fol. 2623] Q. Let's get away from your opinion for a moment and go to your figures.

A. I am sorry.

Q. What does the chart show?

A. It shows a significant increase in percentages taken in isolation from the entire banking community.

Q. You haven't used that word "isolation" in connection with this chart before, Mr. Pugh. Why do you qualify it now?

A. Because banks are very responsive and influenced tremendously by what is happening in national monetary policy, availability and so forth.

Q. Whatever that means, it still shows the Nashville Bank and Trust Company did increase more in this presentation of yours through the years than Third National Bank. Is that correct?

A. In percentage terms, yes.

Q. Thank you. Now let's try this plus and minus methodology of yours that you used on the other charts, and let's take the period from December 1960 through December 1963, and the period December 1956 through 1960. How much did Third National Bank increase from December 1956 to December 1960, Third National Bank?

A. December 1956——

Q. To December 1960.

[fol. 2624] A. Oh, sorry. From '56 to '60, an increase of 5.6.

Q. Let's make these even periods, then, Dr. Pugh. I don't want to be accused of running odd-numbered periods against you. Let's make it December 1957 to December 1960. What was the increase there?

A. For the Third National Bank, sir?

Q. Yes, sir.

A. An increase of 5.8 percent.

Q. And at that same period, from December 1957 to December 1960, what was the increase in Nashville Bank and Trust Company?

A. .12 percent.

Q. Less than one percent?

A. Yes, sir.

Q. Let's take it from 1960, December, to December 1963 for the Third National Bank. What was the percent of increase?

A. About .6—.7.

Q. 0.7 percent. For that same time period, December 1960 to December 1963, what was the increase for Nashville Bank and Trust Company?

A. 4.6 for those two years.

Q. So then what was the difference in the percent of increase for the Third National Bank, using the same [fol. 2625] methodology you used on the other tables?

A. The difference in the increase?

Q. Between the two periods.

A. 4.5 percent.

Q. For which bank?

A. For the Nashville Bank and Trust Company.

Q. That was plus 4.5?

A. Yes, sir, that's right.

Q. And how about the difference with regard to the Third National Bank?

A. Plus 12 again.

Q. Plus?

A. I am not sure of the base now, sir.

Q. Well, we had during the first period, you gave us 5.8 percent; and in the second period you gave us 0.7. Now I want the increase for the second period. Is it plus or minus?

A. The increase in percentage terms for the Third National Bank was .7, 1960 to 1963.

Q. That's true, and it was 5.8 for the first period?

A. Yes, sir.

Q. So will you now use your methodology to relate the second period to the first, and do we come up with a plus or minus factor?

A. A minus 5.1, sir.

[fol. 2626] Q. And that's for Third National Bank?

A. Yes, sir.

Q. You informed us that loans-to-deposits are a standard ratio. I show you a booklet, Dr. Pugh, the title of which is, "Commercial Banking in South Carolina, 1940 to 1962," and the author of that book is Olin S. Pugh.

Is that yourself, sir?

A. I have written such a booklet.

Q. Now I show you this booklet and invite your attention to page 16 and ask you if you illustrated this booklet by loans-to-deposit ratios?

A. Throughout this booklet——

Q. Just answer my question: Is the booklet illustrated by loans-to-deposit ratios?

A. No, by loans-to-assets ratios.

Q. Then you have used loan-to-asset ratios, and have you noticed that the Government in its presentation used loans-to-assets-ratios?

A. I do not recall.

Q. Have you seen Government Exhibit 1012?

A. I have, sir. But I don't recall the numbers. I have seen these exhibits.

Q. I show you a copy of Government Exhibit 1012 and ask you what ratios we have used in the third column there.

A. Total loans to total assets, yes, sir.

[fol. 2627] Q. So we have used the same standard ratio that you used in your booklet discussing banking in South Carolina. Is that correct, sir?

A. In this case yes, sir.

Q. For the moment I am going to ask you to keep Government Exhibit 1012 in front of you if you would, Dr. Pugh. Now I ask you to compare the loans-to-asset ratio of Nashville Bank and Trust Company and Third National Bank. Which was the higher?

A. In 1962 the Third National Bank was higher—49.6 percent.

Q. That's 9.6 percent higher than the Nashville Bank and Trust Company? Is that correct, sir?

A. Not 9.6, I don't believe so.

Q. About 8.3. The difference between 49.6——

A. 8.7 percent.

Q. 8.7 percent higher. Will you tell us what the percentage was, loans to assets, of all member banks in the Sixth Federal Reserve District?

A. It is shown at 40.2 percent.

Q. Now, for all banks in the Sixth Federal Reserve District, which includes Nashville, was the loans-to-assets ratio higher at Nashville Bank and Trust Company or at all member banks?

A. At all member banks throughout the Sixth Federal [fol. 2628] Reserve District, the ratio was slightly lower than for Nashville Bank and Trust Company.

Q. In other words, it was above that average?

A. .7 percent.

Q. Will you refer to the table on page 17 of your booklet. This purports to be a table of total loans as a percentage of total assets for various years. Is that correct, sir?

A. Total loans to total assets, yes, sir.

Q. And once again you used the loans-to-assets ratio, is that right?

A. I did throughout this study I did, yes, sir, because I think it is simpler for public discussion.

Q. You have in there a ratio for all banks in South Carolina. In the last year that you have——may I see it just one moment, sir?

The last year you have is 1961. Is that correct, sir?

A. In this study, yes, sir.

[fol. 2629] Q. And what was the ratio for all banks in South Carolina, loans to assets?

A. 39.7 percent. This includes——

Q. And compare that again now with the Nashville Bank and Trust Company.

Mr. Farris: If the Court please, I would like to observe that we don't understand what South Carolina has to do with Nashville, Tennessee. I think this is beyond the scope of direct, and completely irrelevant. If he wants to make Dr. Pugh his witness——

The Court: What is the purpose of this?

Mr. Minicus: I am now comparing, on the basis of various standards, Your Honor, Dr. Pugh's presentation of Defendant's Exhibit 42, where he compared Nashville Bank and Trust Company ratios with Third National Bank ratios.

I'm now—I have already compared them with all banks in the 6th District. We have Dr. Pugh's statement for all state banks in the State of South Carolina. I want to see how Nashville Bank and Trust Company stacked up with that one, and whether this great difference between the ratio of Third National Bank and Nashville Bank and Trust Company is one that carries out with comparison with other banks.

Mr. Farris: If the Court please, may I——

[fol. 2630] The Court: Go ahead.

Mr. Farris: We don't know how many banks are included in the South Carolina study that may be in rural communities, where there's very little demand for loans. This I think is completely irrelevant.

The Court: I don't know that that's relevant. Sustain the objection. I don't see the relevancy of that South Carolina comparison.

Mr. Minicus: We had the same trouble trying to compare that table on checking accounts, if you remember when they came in with checking charges from twenty-one different cities, and we couldn't see the relevancy of it either at that time. It may not be relevant.

The Court: Well, you can put it in for informational purposes, but I don't see——

Mr. Minicus: I'm not putting the exhibit in, Your Honor.

The Court: I mean the answer, let him answer, the comparison.

The Witness: Would you restate your question, please?

By Mr. Minicus:

Q. Certainly, sir. I simply asked you to compare the ratio for all banks in South Carolina with——or all state [fol. 2631] banks in South Carolina with that for Nashville Bank and Trust Company, one year later.

A. Well, as of December, 1961, for all banks, the ratio in South Carolina was 39.7 percent. For the Nashville Bank and Trust Company in 1962, one year later, it was 44.9 percent.

Q. From our discussion, is it your opinion that Nashville Bank and Trust Company's loan to assets ratio was particularly out of line with banks in the 6th Federal Reserve District?

A. Yes, sir, I do in the sense that Nashville is not typical of the 6th Federal Reserve District. You are not in the same type of banking market. The practices and the conveniences and the location in terms of clearances and collection of checks and business loan demands are completely different, sir, and in that sense——

Q. Well, if you want to discuss Nashville, I'll go back there with you then. What was the ratio at Nashville Bank and Trust Company on GX-1021?

A. 1021?

Q. 1012, sir.

A. 1012?

Q. Yes, sir.

A. The ratio of Third National Bank, sir?

Q. No, Nashville Bank and Trust Company.

[fol. 2632] A. As of December, '62?

Q. Yes, sir.

A. Was 40.9 percent.

Q. And what was it at Commerce Union?

A. 43.7 percent.

Q. And at First American National Bank, sir?

A. 44.1 percent.

Q. Now was the difference greater between Commerce Union and Third National Bank than it was between Commerce Union and Nashville Bank and Trust Company?

A. Was the difference greater between Commerce Union and Third National——

Q. Yes, the two banks, the two sets of banks?

A. Well, Third National was much higher than any of the larger banks shown here.

Q. How much higher was it than——roughly how much higher was it than Commerce Union?

A. Commerce Union, Third National was approximately six percent higher or 5.9 percent perhaps.

Q. And what was the difference between Nashville Bank and Trust Company and Commerce Union?

A. 2.8 percent, I believe.

Q. So that if Commerce Union is representative of the area, then Nashville Bank and Trust Company was closer to it than Third National Bank was, is that correct, sir?

[fol. 2633] A. Closer to the average, you mean, sir?

Q. If we take Commerce as representative of the area. I didn't mention the averages, if we take Commerce Union as representative of the area. You requested me to come back to Nashville, and I'm doing that.

A. Well, I'm at a disadvantage of not having an actual percentage for the total market, but I would agree of course that the Trust Company was closer to Commerce Union's percentage.

Q. Now I would like to have you look at your booklet once more and this time we'll talk about the loans to asset ratio for the entire United States.

What was the loans to asset ratio of all banks in the United States in your booklet?

A. You don't have the page, do you, sir?

Q. I believe those ratios were on 19, were they not?

A. Seventeen, I believe now. Yes, sir. For all banks in the United States in 1961?

Q. Yes, sir.

A. 44.9 percent in 1961.

Q. And what was it again for Third National Bank in 1962?

A. 49.6 percent.

Q. Now how much was Third National above the national [fol. 2634] average?

A. 5.7, I believe.

Q. 5.7 percent above the national average?

A. Yes, sir.

Q. Is it conceivable, Dr. Pugh, that conservative bankers might consider a ratio in Tennessee which was five points above the national average to be on the risky side for loans?

A. I'm sure that many bankers, small bankers in Tennessee, would, yes, sir, as they would in South Carolina.

Q. Now, Defendant's Exhibit 43 here is merely a pictorial representation, is it not, of your exhibit 42 that we have been discussing?

A. I believe so, yes, sir.

Q. And will you just direct your attention, Dr. Pugh, to the final segment, is that Nashville Bank and Trust Company here?

A. Yes, sir.

Q. And if that's Nashville Bank and Trust Company, what bank seems to be showing the highest rate of increase during the final period there on loans to the deposits?

A. You mean for the last year or two years, sir?

Q. For the last two years, yes.

A. The apparent rate of increase was slightly higher for the Trust Company in percentage terms, but this is cer- [fols. 2635-2644] tainly questionable.

Q. Is this your chart, sir?

A. It is a representation of what I developed, yes, sir.

Q. What do you mean by that, it isn't exactly what you developed?

A. I did not draw it physically.

Q. No, do you find any error in it, sir?

A. No, sir.

* * * * * * *

[fol. 2645] Redirect examination.

* * * * * * *

[fol. 2646] By Mr. Farris:

Q. Dr. Pugh, you were asked to compare the percentage gain in loan and discounts of Nashville Bank and Trust Company with the percentage gain in gross national product.

A. Yes, sir.

Q. I would like to ask you in your opinion is that a fair [fol. 2647] comparison?

A. No, sir, I do not think so at all. May I explain slightly?

Q. Please explain why.

A. You will find that consistently for the last five years we have had tight monetary policy, a deliberate policy of keeping short-term interest rates rather high for balance of payments purposes and otherwise; and banks have not been allowed to grow very much on the demand deposit side.

There is no necessary correlation between a change in banking assets or banking deposits and gross national product. For one thing, you must keep in mind that the use, the velocity of money, has more than tripled in the last fifteen years in this country. And also if you take into account the use of money, then the comparison with just a dollar base is almost meaningless.

Q. Dr. Pugh, I will ask you to refer to Defendants' Exhibit 37 which is entitled, "Growth of IPC Deposits," and also to refer to Government Exhibit 1004, which I believe was brought into your cross-examination.

A. I have 1004 here. I have the Justice's copy.

Q. State what the IPC deposits of the Nashville Bank and Trust Company amounted to in June 1960.

A. June 1960, $19,981,000.

Q. From an examination of that exhibit, did they ever [fol. 2648] again reach that figure?

A. No, sir.

Q. Dr. Pugh, I believe you overheard testimony by the witness J. C. Bradford to the effect that the president of Nashville Bank and Trust Company requested him to place

substantial deposits in the bank just prior to call dates, and that he never had similar requests from other banks in Nashville.

Would you call that window dressing?

A. It sounded like that to me, yes, sir.

Q. From that evidence and from an examination of all these figures of Nashville Bank and Trust Company, do you have any opinion as to whether window dressing has entered into their figures from time to time?

A. It is my opinion that it has, particularly from an examination of their recent call reports, the ones that I had available. I would point out that a rather surprise call date of December 20, 1963—a rather unusual date for a year-end call—the cash balances of the bank were shown at $5.8 million; and in the previous December, December 28, near the year-end, the cash balances had been shown at 29—indeed were shown at $14,212,000.

Q. Dr. Pugh, with respect to loan-to-deposit ratios and loan-to-asset ratios, explain the differences between those [fol. 2649] two ratios and what significance those differences might have, if any.

A. There really is not much difference. The only difference is that in the loan-to-asset ratio you are including the total capital structure of the bank. This on the average in the nation is about 8.4 percent of assets. So if you have a loan-to-deposit ratio, it is a slightly lower base than if you have a loan-to-asset ratio.

Banking traditionally has used loan-to-deposit ratios. All banking literature of twenty years ago was written in this vein. Most bankers of any age still talk about loan-to-deposit ratios.

The government, including the FDIC, in publishing its call statements nowadays does talk consistently of loan-to-asset ratios. So the industry is divided as to which to use, and some people use one and some another. I frankly use both.

Q. In your opinion, Dr. Pugh, if you are going to compare the performance of a bank in terms of loan-to-deposit ratios, which is a more valid comparison: One with the averages of all the banks in a wide area like the Sixth Federal Reserve District, or a comparison with the local banks in the same market with the bank in question?

A. If you are discussing one bank and looking at its operation and management and use of funds, you have to start out with the local banking market as your basis for compari- [fol. 2650] son. After you have done this, then you may spread out into states and Federal Reserve Districts and the United States.

But you must start out thinking about the local market if you are talking about one bank.

Q. Dr. Pugh, counsel read you a statement quoting from the opinion of the Supreme Court in the Philadelphia National Bank case in which the words used were "undue share of the market." I will ask you again to tell us what factors enter into what you would consider to be an undue share of the market.

A. In my opinion the primary factor is the way that the firm attained or acquired its status or relative position in the market. The methods that have been employed, whether or not it is a result of a series of combinations and mergers, or whether or not it is a result of aggressive and sound business leadership and in a sense, normal, orderly market growth.

Q. Is it true that in the Philadelphia National Bank case the banks involved there had both been engaged in a long series of mergers?

A. As I recall, yes, sir.

Q. Is it also true that in this case the Third National Bank has never had a merger and Nashville Bank and Trust had not been involved in a merger for over twenty years?

A. Yes, sir.

Q. Then do you regard the language, "undue share of the [fols. 2651-2655] market," as being applicable to this situation here in Nashville?

A. No, sir, I do not.

* * * * * * *

[fols. 2656-2659] JOHN CLAUDE GARRETT, a witness called to testify by and in behalf of the defendant intervenor, after having first been duly sworn, was examined, and testified as follows:

Direct examination.

By Mr. McEnerney:

Q. Mr. Garrett, would you state your address for the record?

A. Goodlettsville, Tennessee.

Q. And where are you employed?

A. Bank of Goodlettsville.

Q. And what position do you hold at the bank?

A. President.

Q. When was your bank founded?

A. 1889.

Q. How many years have you been with the Bank of Goodlettsville?

A. Fifty-two.

* * * * * * *

[fol. 2660] Q. Now based on this foregoing analysis of your total assets, both before and after the merger involved in this case, what can you tell the Court about the growth in your total assets?

A. We have had a continuous growth all along.

[fols. 2661-2663] Q. Can you state as a fact that this merger has not prevented the total assets of your bank from steadily increasing?

A. We haven't seen where it's hurt us in any way.

* * * * * * *

[fol. 2664] Q. Based on the foregoing analysis of your total loans, what is your assessment of the effect of this merger on your bank's deposits?

A. We don't see where we have been hurt in any way.

Q. Would it be fair to say that your bank deposits have significantly and steadily increased since the merger?

A. Yes, sir.

Q. Does your correspondent bank, First American, compete against you or solicit accounts of your bank?

A. No, sir.

[fols. 2665-2671] Q. Does your bank have a credit department.?

A. Yes, sir.

Q. And do you have credit card files?

A. Yes, sir.

* * * * * * *

[fol. 2672] JOHN B. HARDCASTLE, a witness called by and on behalf of the Defendant Banks, after being first duly sworn, was examined and testified as follows:

Direct examination

By Mr. Farris:

Q. Mr. Hardcastle, give your age, your address, and your position.

A. I am twenty-nine years old. I live at 5921 Longmeadow Drive. I am currently assistant cashier and manager of the Dickerson Road office of the Third National Bank.

Q. What is your educational background?

A. I graduated from Vanderbilt University in 1958 with a B.A. degree, and I have taken all but two courses which lead to a graduate certificate in the American Institute of Banking.

I have received some education through NABAC and am the immediate past president of the Nashville chapter [fol. 2673] of NABAC, which is the organizational people's bank association.

Q. Describe your business career since you graduated from Vanderbilt.

A. I entered the life insurance business for a period of a year; was employed on July 1, 1959, by the Nashville Bank and Trust Company. I became an officer of the Trust Company in '61; and from September of '59 until the date of the merger I served as manager of the bookkeeping and transit departments of the Nashville Bank and

Trust Company, and had some responsibilities in the personnel area.

Q. I believe you are related by marriage to the Hill family, are you not?

A. Yes, sir, in a fairly remote way. My wife's great aunt was Mrs. H. G. Hill, Sr.

Q. Describe the functions of the department you were manager of. What did it do briefly?

A. The transit and bookkeeping departments were concerned with the handling and flow of checks and deposits as they went through the bank, and the accounting for customers checking accounts.

Q. Did you have any particular problems in the operation of that department?

A. Yes, sir. We had problems in three areas. The first was a lack of physical space. The bookkeeping and transit departments were housed on the balcony in the main office [fol. 2674] of the Nashville Bank and Trust Company, with check filing and addressograph equipment in the basement. We were spread over two floors.

The checks were posted on one level and another operation was going on two floors beneath us. We could have made some improvements in our system of manual or double-posting method of posting the checking accounts for our customers, but there simply wasn't the physical room to do so.

We were right well jammed in and it was often hard to keep one bookkeeper's work separate from another bookkeeper's work, because there just wasn't the level space in which to work.

We had some difficulties in that respect, even though some space did become available in 1961 on the balcony of the adjacent departments, when the credit bureau moved out. But from December of '61 until the current date space—even though it was empty—was not made available to us.

The second area in which we experienced difficulties was in getting competent young men with some college background to come to work in the commercial banking side of the bank. While the trust department seemed apparently to be able to offer some starting salaries that enabled some young men to go to work in that area, we were not able to offer on the commercial side any more to young college graduates than we were to a young girl just out of

high school who was coming to work for the bank as a [fol. 2675] trainee for a bank posting job as a bookkeeper.

I talked to a number of young men in my five years with the trust company that I would have liked to have had come with us. But it was a little hard to get a man to go to work for your bank at a salary that was right at whatever the current minimum wage was, when he could go across the street and command twice that salary.

We were able for various reasons to get three young men who had had some college backgrounds to work with the Trust Company during that period, two of whom left our employment within a year, and primarily because they could command higher salaries elsewhere.

We had some other difficulties in the area of equipment, systems and procedures. We were operating under what is known as a manual posting system, using the double posting method. The system had remained essentially the same since the thirties.

We did change the model of the bookkeeping equipment that we used in 1953; but the system was still essentially the same.

This was a good, sound system of accounting for checking accounts of the banks' customers in the fifties. In light of the labor market situation, the technology of banking at the time, it was a good system then—and the size of the [fol. 2676] bank, which was a $20 million bank, roughly.

But times changed, and the bank grew; and the bank more than doubled in size. The banking industry entered an era of rapidly changing technology. We had first semi-automated machines which Mr. Garrett has in use in Goodlettsville; and then entered fullblown into the computer age.

The first step in any well-planned modernization or automation program is a feasibility study. What are you doing now and what type of equipment is available and what will it do for you, and at what price?

There was never to my knowledge a feasibility study accomplished to see what a computer could do for us.

I did have on my own initiative—with the permission of Mr. Hackworth—I had tried to keep abreast of what was going on and what was available in the area of bank hardware to get the job done and to try to keep abreast of what the various equipment manufactures had to offer and to try

to get some basic understanding of how it worked and what it could do for us.

However, in any type of an automation system, a semi-automated system, using the tronics—the posttronics or the sensotronic, or in using the computer—the numbering of accounts is essential. We did not number our checking accounts at the Nashville Bank and Trust Company.

Q. Did you attempt to have such a system installed?

[fol. 2677-2681] A. Yes, sir. Personally I felt that the size of the bank had grown to the point and the equipment manufacturers had come down to the point where there were systems and procedures, there was equipment available, which the Nashville Bank and Trust Company could use to good advantage.

To my knowledge most computer installations cannot be justified solely on the basis of cost of the number of people you get rid of, as to what the equipment costs you. It may save you money, but it is in terms of being able to absorb a much larger volume without any additional increase in equipment and staff. You justify it on the basis of the efficiency it will accomplish.

A machine does not normally make a mistake. An individual—we have all got erasers on the ends of our pencils—we make mistakes. So what the machine does automatically, your bookkeeper can't make an error on. There are advantages in terms of how quickly you get information and how accurately you get information.

You can do things in semi-automated and automated systems to give you some of the basic information that is important to management decisions that are simply impossible on a manual posting sytem.

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[fol. 2682] By Mr. Farris:

Q. Now, Mr. Hardcastle, during the latter part of 1963 had you made a decision in your own mind with respect to your future at the Nashville Bank and Trust Company?

A. Yes, sir.

The Court: What date?

Mr. Farris: The latter part of 1963. That was just before the——

The Witness: I felt very grateful to Mr. Hackworth and Mr. Hill for giving me the opportunities to assume positions of responsibility with the bank. I also felt that my salary increase had not gone along as fast as it could have, that there were others of my friends with other similar institutions and in other lines of work that I felt were making a good deal more than I was; and I had made up my mind and discussed it with Mr. Hackworth that I would have a limitation on what my salary could increase to because of the salaries of the older men there.

He didn't feel—and I think perhaps justly so—that he [fol. 2683] could raise me, being a young squirt being with the bank five years, over the salary range of officers that had been there for much longer periods of time.

Therefore I had made up my mind to actively seek other employment, not on a public basis. In December 1963 I entered into an agreement with a Nashville businessman to go into partnership with his small service business. That agreement was contingent upon agreeing for a price I would pay for a share of his business.

During the month of December it became apparent that we could not agree on what that price should be, and that relationship was terminated. However, I continued to be aware of situations that might be open in the Nashville area.

By Mr. Farris:

Q. Were you still of that state of mind at the time the merger was announced?

A. Yes, I was at the time the merger was announced.

Q. Did the merger have any effect upon your decision to remain?

A. Yes, sir, it did. I felt a good portion of the clerical employees of the Nashville Bank and Trust Company I had hired. We had a job policy of hiring people through—to promote people out of the bookkeeping and transit depart- [fol. 2684] ments into other departments, as tellers and secretaries. So there was a continuous flow through our department. I felt a responsibility to these people, to remain with the organization; and if they needed someone to speak up on their behalf or were unhappy over the situation, they would have someone who had a hard enough head to speak his piece.

That was not necessary. During the course of events from the date of the merger on, my personal situation, both in terms of what I was being paid for, what I was doing, and the type of opportunities I had to increase my work as a banker and have the opportunities of getting some background in the credit department—my experience in the operations end of it were becoming obsolete. It was a manual posting system.

There weren't many of those around any more. I was given an opportunity to increase my worth to the bank and to myself by getting a background in banking. Frankly, I was very impressed—let me say at the outset here that I think it would be unnatural if I didn't have any big question marks in my mind on the date of the merger.

Those question marks were very quickly dispelled. I could not have received better treatment on both a professional and on a personal basis from the staff and management of the Third National Bank.

I have obviously decided to continue my career with [fols. 2685-2689] banking and am very pleased to be with the Third National Bank.

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Cross-examination

By Mr. McKenna:

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[fol. 2690] Q. You mentioned that the salaries in the commercial areas were not in line with those in—or in the banking area were not in line with those of the trust department, is that correct?

A. Starting salaries for young college graduates weren't. Now this is an area obviously I did not have access to the payroll records of the officers of the Nashville Trust Company.

Q. So as far as you know, the personnel in the commer- [fols. 2691-2699] cial department could have been being paid as much if not more than those in the trust department, is that correct?

A. Not the starting personnel, no, because I know from

what the gentlemen have told me what they started at, what the starting salaries were.

Q. But you have no personal knowledge of that?

A. No personal knowledge of what, sir?

Q. Of the starting salaries in the trust department?

A. I have knowledge of what some starting individuals who went to work in the trust department told me, yes, sir, and I know what I went to work for in the commercial department, which was $175.00 a month being the current prevailing minimum wage law at the time.

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[fols. 2700-2701] JAMES ARRINGTON WEBB, JR., a witness called to testify by and in behalf of the defendant banks, after having first been duly sworn, was examined, and testified as follows:

Direct examination

By Mr. Farris:

Q. Mr. Webb, state your age and your position.

A. I'm forty-three years old; my direct responsibility is the business development department of the Third National Bank, and I'm a vice-president.

* * * * * * *

[fol. 2702] Q. Now back to the local business development situation, how many calls were made upon customers and prospective customers by personnel of Third National Bank during 1963?

A. We have these grouped together for our bank purposes. We don't segregate our customers and noncustomers. We report on a total basis, and in 1963, we made a total of 6,689 calls on our customers and prospects.

* * * * * * *

[fol. 2703] Q. Now, in 1964, submit the same figures, will you, please?

A. In 1964 our total calls were 10,008 calls, broken down; assigned calls were 5,174; calls not assigned, 4,834.

Q. In 1965 submit the same set of figures.

A. In 1965 our total calls were 13,970: assigned calls, 5,151; calls not assigned, 8,829.

Q. What have you observed with respect to the other banks in the city in the making of calls during these three years?

* * * * * * *

A. Mr. Farris, in 1963 the American was our primary [fol. 2704] competitor. Nashville Bank and Trust Company, particularly in the food accounts, did a good job through Kirby Primm, and I am certain under the direction of Mr. Hackworth. But outside the food area, the Nashville Bank and Trust Company was never considered by us to be a real competitor in the Nashville market.

As a matter of fact, even the Commerce Union Bank at that time was not nearly as strong as they are becoming. Over this period of time, of course, the Commerce Union Bank has begun to bring in new and younger blood. They are becoming much more competitive than they had been in my bank experience here.

The Nashville Bank and Trust Company, of course, when Mr. Primm left, was left really without a strong and a well-identified person in their business development or sales area. The First American, with his addition, has become a stronger competitor than they were heretofore.

The Capital City Bank, under Mr. Nile Yearwood, has begun an advertising program; and we feel that they are doing a better job as far as competition is concerned. We made every effort to improve our own competitive position in this market.

We have added a significant department which operates in the field of women's development work, which is particularly helpful to newcomers to the Nashville community, [fol. 2705] where we and our ladies assist to find housing, to recommend the proper schools, to recommend kindergartens, babysitting agencies, department stores—almost every type of need or service that you would find available to any resident of Nashville.

At the same time, the Commerce Union has developed a

department of this type. First American has developed a department of this type. So that more and more, as we call on our customers and prospects, we have increasingly been aware of the efforts of our competitor banks to take business away from us or to retain their own accounts or to win over the newcomers in our area.

We have even had situations where people out of town who would be announced as a newcomer to Nashville—or perhaps unannounced—would receive a floral arrangement for their desk from one of our competitors; would be sent the Nashville papers; and as the moving van would pull into the city our competitors would have a box lunch available for these people.

I don't know how you can get much more competitive than that. I would say this from my own knowledge. The people who come to Nashville and are aware of the fact tell us that Nashville is the most competitive banking town they have ever seen.

* * * * * * *

[fol. 2706] Q. Mr. Webb, with respect to working on business development, how important have you found a larger lending limit to be?

A. Well, I would say this, Mr. Farris. Through the last hundred years since the Civil War, when our currency was worth nothing, our financial institutions have had to rebuild themselves. Our country in the South has had to rebuild itself completely.

We are beginning to reach the point in the South where we can break the near monopoly of the Eastern banks so that we now begin to have enough capital and surplus so that we can offer legal limits sufficient so that we can serve as lead banks in credit lines, rather than a poor relative participating with some other bank somewhere.

We can, with our own Southern industry, serve as a lead bank and negotiate for the terms of the loans; offer our trust facilities for whatever they might need; have them seek us for advice and counsel in the South rather than having to go to the Midwest or the East for financial assistance.

We have also found that we have been able to go into other parts of the country and sell ourselves as being able

to serve as the lead bank and have a legal limit large [fols. 2707-2775] enough to be interesting and attractive to these people. We have customers in the Nashville area —may I refer to my notes?

The Court: If you need to refresh your memory.

The Witness: I appreciate it, just to refresh my memory here. For instance, Acme Boot Company of Clarksville, Tennessee; Baird-Ward Printing Company here in Nashville; Bryan Engineering Company in Huntsville, Alabama; Gates Rubber Company at Denver, Colorado. Murphree Mortgage and Kimbrough-Phillips in the housing field here we are able to serve with our full legal limit. Genesco, Inc. Malone and Hyde, based out of Memphis. Murray-Ohio at Lawrenceburg, Tennessee. Ralston Purina Company out of St. Louis, Missouri. Tennessee Farmers' Cooperative at Lavergne, Tennessee.

These people we have been able to make a major service to. Our legal limit is now large enough so that we can serve as their lead bank and be of assistance to them in finding other participants if we have to.

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[fol. 2776] THOMAS BUTTS, a witness called by and on behalf of the Defendant Banks, after first being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Farris:

Q. Mr. Butts, please state your age and your position.

A. I am thirty-six years old and am vice-president of the Third National Bank.

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[fol. 2777] Q. Will you describe the work of the correspondent bank department of Third National Bank?

A. Our work primarily entails the developing of correspondent bank relationships throughout a good-sized

area. Our work naturally entails a great deal of traveling and contact with these banks.

Q. How many correspondent bank customers did Third [fol. 2778] National Bank have at the end of 1963?

A. In the neighborhood of 360, as I recall, Mr. Farris.

Q. How many correspondent bank customers does Third National Bank have today?

A. Three hundred and seventy, sir.

Q. How many correspondent bank customers did Nashville Bank and Trust Company have just prior to the merger?

A. I believe they had eight or ten accounts, Mr. Farris.

Q. What was the nature of these accounts?

A. They were primarily complimentary accounts.

Q. What do you mean complimentary accounts?

A. Well, they had dormant balances they had placed in compliment to an individual in the bank or for some various reason. It was not an active account.

Q. Where are the correspondent bank customers of Third National Bank located?

A. Our area can be defined east as far as the Smoky Mountains; north as far as Louisville, Kentucky; south as far as Birmingham, Alabama, although we do have some connections south of Birmingham; and to the west we are pretty well confined to the river.

That's as far as we can go.

Q. You mean the Mississippi River?

[fols. 2779-2789] A. Right, the Mississippi River.

* * * * * * *

[fol. 2790] Q. Mr. Butts, from what you know of the Nashville Bank and Trust Company, in your opinion, could [fol. 2791] it have been competitive in the correspondent bank field?

A. Yes, sir, it could, Mr. Farris. Maybe not in the same way that we are competitive, but they could compete for the deposits of these banks through a method of absorption of exchange, and when I say absorption of exchange, I mean this. There are a great many non-par banks in Tennessee. Most of them of course are in the West Tennessee area. There are more non-par banks in north Alabama and in north Mississippi.

The could absorb this exchange based on a balance, a monthly balance, an average balance, according to how much they absorbed.

Now the reason they can do this, they are state, non-member banks, and they are not prohibited by law from absorbing exchange. Now a national bank or state member bank cannot absorb exchange of more than—of any one customer of more than two dollars a month, I believe.

A good example of a bank organized in Birmingham last—I believe it's about eighteen months old now—they were organized, they were state, non-member bank. They are—as of this time, right now, they are forty-three million in total assets, and we are told that they have about eight million dollars in correspondent bank balances based on absorption of exchange.

There is a bank in Jackson, Mississippi that does the same thing. They are about twenty-six or twenty-seven [fol. 2792] million in total assets, and they would have four and a half to five and a half million in correspondent totals.

There is also one in Meridian, Mississippi, that's been absorbing exchange for a good many years, and I would say that they are in the same range as this bank in Jackson, Mississippi, twenty-five, twenty-six million in assets, and they would have five or six million in correspondent totals.

In addition, there are other smaller banks, even smaller than the Nashville Bank and Trust Company, before we merged, that aggressively seek this business. There are two banks in Jackson, Tennessee, that seek this business; there is one in Huntsville, Alabama; there is one in Kingsport, Paducah, Kentucky, just to name a few that are in this field, and offer various services to attract correspondent business, but the Nashville Bank and Trust, being a state, non-member bank, could have absorbed exchange and built balances, and of course with building balances and close connections with the banks, they had their foot in the door so to speak and as time goes on could have offered additional services to them.

They naturally would have had to have expanded their area, because in order to absorb exchange, they would have to solicit business from the banks in the area where the non-par banks are located, and this would be primarily in [fols. 2793-2811] West Tennessee, although there are some

in East and some in Middle, but as I said before, they are primarily in the West Tennessee area.

Q. Now, Mr. Butts, who are your competitors in the correspondent bank field?

A. Our competitors in the correspondent bank field are the city banks that surround the area which we try to serve. The banks in St. Louis, the banks in Memphis, Jackson, Mississippi, Birmingham, Alabama, Atlanta, Chattanooga, the Carolina banks, Knoxville, Louisville banks, Evansville, Indiana banks, to some extent, and there's not a convention that I attend in the three states I try to travel that we don't run into a representative from practically all of the New York banks and Chicago banks, so we are competing with the New York and Chicago banks in this area, because they are competing with us for these balances.

Q. Now locally who are your competitors?

A. Locally the First American National Bank and the Commerce Union Bank.

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[fol. 2812] Edward M. Norman, was called as a witness by and on behalf of the Intervenor, and, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McEnerney:

Q. Mr. Norman, where do you live?

A. Clarksville, Tennessee.

Q. Would you tell the Court what your occupation is?

A. I am president of the First National Bank of Clarksville.

Q. How long have you held that position?

A. Since 1959.

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[fol. 2813] Q. Could you tell us the size of your banking deposits?

A. Between $21 million and $22 million.

Q. Are you a correspondent of a larger city bank, Mr. Norman?

A. Yes.

Q. In what cities are your correspondent relationships located?

A. We maintain accounts in Nashville, Memphis, Chicago, and New York City.

Q. Is there any competition among these banks for your correspondent business?

A. Yes.

Q. Could you describe that to the Court?

[fols. 2814-2816] A. Well, every large bank within the southern area will solicit your account and offer you the various services that it has.

Q. How would you characterize this competition?

A. The correspondent bank department calls upon you. They tell you the advantage of clearing checks for a particular area that they have. They run night shifts as far as clearings are concerned. The convenience of storing securities with them, and of course they offer you computer service.

Q. Which of the banks in Memphis have solicited your correspondent business?

A. The three major banks—the First National Bank, the Union Planters National Bank, and the National Bank of Commerce.

Q. How about in Chattanooga? Has any bank——

A. The Hamilton National Bank and the American National Bank solicited us.

Q. How about in Nashville?

A. Commerce Union, First American, and the Third National solicited us.

Q. Did Nashville Bank and Trust ever solicit your business?

A. No, sir.

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[fol. 2817] Q. Mr. Norman, what would the effect be if any upon your bank and upon the community served by your bank, if there was no correspondent system?

A. We would lose some trust business. We would have higher operational costs, and there are several loans that

are legitimate loan requests that are needed in our community that we could not make were it not for the correspondent banking system.

Q. Can you give any specific examples of where Third National Bank, through the correspondent relationship, has helped you in making loans in your area?

A. Yes. We are right active right now. We had a good loan request for a construction loan to the extent of $950,000. At that time we were only able to carry $140,000 of that line of credit. Yet we established a relationship with the customer, and the Third National in turn has [fol. 2818] helped us to carry the balance until the building is completed.

Our county oftentimes has need of short-term funds that would put very high pressure on our loan portfolio. Yet we want to be the county's bank and have them negotiate with us rather than going to the big city.

So through this arrangement we can loan the county adequate short-term funds up to $3 million or $4 million by the sale of these participations to the Third National Bank.

Q. What type of county activities are these loans going into when you say county? Montgomery County, do you mean?

A. School construction, road construction, and operation of the county government.

Q. Can you give any other examples of where a correspondent in, for example, say, Memphis has helped your community?

A. Yes. We feel we have been assisted in the grain marketing business. We think that to create an agricultural market would be one of the most important contributions we could make, and we now trade with five grain elevators with a total line of credit running up to about $1 million that is negotiated at our bank that would be sold to other correspondents.

Q. Has this created any more jobs in your opinion?

A. Yes, it has expanded our agricultural trade territory. [fols. 2819-2821] For instance, a retail store, we are building with a construction loan now, will begin employment of three hundred sales people.

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[fol. 2822] Q. Do you feel that branches are necessary in order for you to meet your customers' conveniences and their needs?

A. Yes.

Q. Do you feel that the branches are also necessary for the growth of your bank?

A. Yes, because as our area expands, we have to have installations to have the convenience to get the deposit.

Q. Mr. Norman, who are your competitors for the savings dollar?

A. Savings and loan associations and banks.

Q. Would credit unions be competitive with you in that area?

A. Yes, sir, they are.

Q. And who are your competitors in the lending area?

A. Banks, production credit associations, savings and loan associations, finance companies.

Q. Would credit unions also be in that group?

A. Yes, they would for short-term installment loans, yes, sir.

Q. Mr. Norman, does your bank have adequate credit files on each of its borrowers?

[fol. 2823-2824] A. Yes, on any significant line of credit, we maintain an annual financial statement, an operating statement reflecting profit and loss, together with a running comment of the officer who made the loan, agreements with the customer and his personal comments on the loan on a line sheet.

Q. Do you think for a bank of your size that these are a necessary item?

A. Yes, we have to have them in order to properly appraise the lines of credit.

Q. What would happen, Mr. Norman, if you made a loan say to me and then I came back to renew it or to get another loan from you, you were not there, would these credit files have any bearing on an absence of the lending officer?

A. Yes, he could observe the financial statement of the customer, his operations over the years, but more important, the comments of the officers who made the loan prior to this and what the agreement was about it, if we had

an agreement to accept two thousand dollars in payment and renew the balance, it would be on the line sheet, and any officer of the bank could handle that loan.

The Court: What size is your bank?

The Witness: We are twenty-five million in total assets, sir.

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[fols. 2825-2901] George E. Bivins, Jr., a witness called to testify by and in behalf of the defendant banks, after having first been first duly sworn, was examined, and testified as follows:

Direct examination.

By Mr. Farris:

Q. Mr. Bivins, state your name and your position.

A. George E. Bivins, Jr., and vice-president of Third National Bank, in charge of the bank's personnel department, director of personnel.

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[fols. 2902-2904] John W. Murphree, a witness called by and on behalf of the Defendant Banks, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Farris:

Q. Mr. Murphree, please state your age, your address, and your position.

A. Fifty-four; Belle Meade Tower Apartment; president of Murphree Mortgage Company.

Q. Describe the business of Murphree Mortgage Company.

A. We are in the business of financing properties of all types, residential, commercial, apartment houses, anything that has to do with real property.

* * * * * * *

[fol. 2905] Q. Now, Mr. Murphree, how many years have you been using Third National Bank's legal loan limit?

A. Approximately fifteen years.

Q. For borrowers in excess of Third National's legal limit, how is this handled?

A. They work with other banks outside of the city and I think the expression they use is "farm it out" with other banks.

Q. When this farming out process takes place, do you have to deal with any other bank except Third National?

A. No, sir.

Q. They arrange all of the details?

A. Correct.

Q. What is the advantages in dealing with one bank?

A. Well, there are numerous advantages that a line of credit set up with our local bank in working with other banks, gives you a certain protection during tight money markets, particularly like one we are in at the present time. In addition to that part, trying to deal with a bank at some distance, the amount of stuff—amount of mortgages that we close, the time element from when we would get our money, bcause the day we close the loan, we have to disburse on those mortgages.

Q. Now what is the advantage to you as a customer of a bank with a larger legal limit?

[fol. 2906] A. Well, the larger legal limit means the more that you can borrow from that bank without going out—without them having to go out and farm it out, in other words, even though they farm it out, there's no guarantee that out-of-state banks are going to maintain a definite line of credit. In other words, if the Third National had been able to handle all of this, it would have been much to my advantage even rather than farming it out.

Q. Now, in your opinion, how does a single bank with a larger legal limit serve the convenience and needs of the community?

A. Well, in the growing community such as Nashville

has had over the past twenty-five or thirty years, that every growing business and every growing concern needs credit, and the more credit they have from the more banks, larger banks, who can furnish that line of credit, the better it is for the neighborhood.

Q. How much interest did your firm pay Third National during the last fiscal year?

A. $600,288.33.

Q. If Third National had a smaller legal limit, would not more of this interest leave the community and go outside to banks handling the excess?

A. Correct.

Q. In what way does warehousing mortgage loans serve [fol. 2907] the convenience and needs of the community?

A. Well, let's put first that usually a warehouse loan, a certain percentage of them, a big percentage of them, originate through a construction loan, and a construction loan means that there has been numerous residences built or commercial property which furnishes labor, job, and building supply and other allied business. In other words, that reaches way out through the community.

Q. Mr. Murphree, tell us over what geographic area has your lending activity and the warehousing of loans with Third National operated?

A. Well, we have a branch office in Chattanooga, a branch office in Huntsville, Alabama. It's been primarily in Nashville, and the Middle Tennessee area. Chattanooga office was purchased in 1962; Huntsville was opened in 1958, so you can say it's really within a hundred and fifty mile radius of Nashville.

Q. Have you had any experience banking with the Nashville Bank and Trust Company?

A. Yes, sir.

Q. Will you describe that?

A. I have forgotten the exact date, but during a peak period, we hit peak periods as far as borrowing was concerned, due to seasonable loan residences, we borrowed for warehousing loans. This was not construction loans or [fols. 2908-2909] for closed and committed loans which have a commitment from an investor to purchase them, a half a million dollars to warehouse those loans.

They are very slow in giving an answer. In fact, before

they handled the transaction, they had to call another bank to find out the details of handling it.

Q. What is your opinion of Nashville Bank and Trust Company as a competitive banking factor?

A. Well, of course, any one real estate salesman could be a competitor to a certain extent, but I wouldn't say that the Nashville Bank and Trust Company had been a major competitor by any means.

Q. Do you believe that the merger eliminated a significant competitor?

A. No, sir.

* * * * * * *

[fols. 2910-2917] By Mr. Farris:

Q. The question is do you believe that the merger of Nashville Bank and Trust Company and Third National Bank brought about a substantial lessening of competition?

A. No, I do not. In other words, I don't know. As the question of my position, but in our type business, I'm not speaking of me personally, but I'm speaking of other companies, the type of business enjoys a larger line of credit than other businesses, and our type business is sought after by all banks, so I would say that it has increased the competition. I mean——

* * * * * * *

[fol. 2918] Cross-examination.

Q. Mr. Farris asked you a number of questions about major, substantial, and significant competitors. I wonder if you could define what those terms mean to you?

A. Well, I felt this way. If the Nashville Bank and Trust Company had been a major competitor at the time I borrowed a half a million dollars from them, they had a legal limit of more than a half a million dollars and they had to depend on the advice of another bank to make that loan.

If they had been a major competitor, they would not only have been after additional borrowings and additional deposits, but would also have been out looking for other banks where to place an excess line. In other words, they

never made any move to obtain any additional deposits or give us any additional credit.

Any competitor, any competing bank, we have had other situations where we have had out-of-town banks and other [fols. 2919-2927] banks have been after our business. So I would say that a bank that had no more interest in it than that could not be as far as the mortgage banking a major competitor; and the mortgage banking industry is a big part of your local financial institutions.

* * * * * * *

[fols. 2928-2929] Miller C. Kimbrough, a witness called by and on behalf of the Defendant Banks, was first duly sworn, was then examined and testified as follows:

Direct examination.

By Mr. Farris:

Q. Mr. Kimbrough, will you please state your age and your position and describe your career in business?

A. I am fifty-seven years old, president of Kimbrough-Kavanaugh and Associates, Inc., which is a mortgage banking firm here in Nashville. I started out in the mortgage banking business in approximately 1930 and have been in it ever since.

Q. Have you during recent years been a customer of Third National Bank?

A. Yes, sir, I have been a customer of Third National Bank since it opened.

Q. Has your firm been a customer of Third National Bank?

A. Yes, sir.

* * * * * * *

[fol. 2930] Q. What is the advantage to your business in dealing with a bank that has a larger legal limit?

A. Well, it is not easy always for a bank to get other banks to participate. Somebody thought up this compensating balance business a few years back, and they have

to put money in these other banks to get them to agree to participate in these loans sometimes.

I don't know when that compensating balance started, but it is difficult to work out sometimes. It would be extremely difficult for me if I had to go from one bank to another and borrow a few hundred thousand here and there, and they asked me for a twenty percent compensating balance.

Then I would have to go somewhere and draw money out of the Third National Bank probably. As long as I can do all of my business with one bank, I am in a much better position.

Q. How in your opinion does a single bank with a larger legal limit serve the convenience and needs of the community?

A. You keep more money in the community and the interest is paid to the bank and so forth; it stays in the community. A larger percentage of it does, in any event. It just simplifies the operation. I am one that likes to deal [fol. 2931] with people that I know and they know me. We just have a real good understanding among ourselves. It just eliminates a lot of problems.

Q. How much interest did you pay Third National during the last fiscal year?

A. During the last fiscal year, $424,049.18.

Q. Mr. Kimbrough, aside from construction loans to residential builders, I assume you handle a substantial amount of that type of loan?

A. Yes, I do.

Q. Will you also mention some typical examples of commercial mortgage loans you have handled by working with Third National Bank to provide the construction money?

A. Yes, sir. Here is an example of what the Third National Bank was able to do for us. We got a commitment from an insurance company for a $3.5 million loan in Albuquerque, New Mexico.

We operate on large loans anywhere in the United States. I presented this problem to the Third National Bank. They in turn got Albuquerque National Bank to agree to make this loan out there, and the Third would participate in it, and other banks that the Third was instrumental in getting

that I am not familiar with—they may have been New York or Chicago banks. I don't know who else participated in the loan.

But that's a good example of the type of thing that I [fol. 2932] think a larger bank can do for you that a smaller bank couldn't do.

Q. Will you mention some examples somewhat closer to home?

A. Okay. There is an apartment house loan that we made in Lexington, Kentucky, in the amount of $1,150,000. The Third National Bank worked that out for me and we handled the financing of that apartment house in Lexington.

We have got a $750,000 loan at the present time in Louisville, Kentucky. We have made numerous loans in Huntsville, Lexington, Louisville, Evansville, Indiana, Atlanta, Georgia.

All of these loans were participated in one way or another by the Third National Bank.

* * * * * * *

[fol. 2933] Q. Have you been an observer all that time of the banking scene in Nashville?

A. I would say so, yes.

Q. Do you have an opinion with respect to the effect of the merger of Third National Bank and Nashville Bank and Trust Company upon competition?

A. My opinion would be that it has stimulated competition rather than to have lessened it.

Q. Now, Mr. Kimbrough, with respect to loans made in the area in and around Nashville, do you handle a good volume of residential loans?

A. Yes, sir.

Q. Will you state how those loans serve the convenience and needs of the community?

A. Well, they stimulate business, I would say all segments of business. It definitely creates jobs for people—carpenters, plumbers, roofers, electricians, all sorts of people of that sort.

They go out then and buy automobiles and things with the money. It stimulates the whole economy of the section I would say.

Q. Does your borrowing from Third National Bank help you in handling that type of loan?

[fols. 2934-2939] A. Yes, sir.

Q. Do you have an estimate with respect to the total volume of outstanding mortgage loans being serviced by the five or six leading mortgage bankers with headquarters in Nashville?

A. I would say it is probably around a half a billion dollars.

Q. How much is your company servicing at this time?

A. About $100 million.

Q. Mr. Kimbrough, in your opinion and from your point of view as a borrower, which can render more desirable service: Two banks with one having a legal limit of $2 million and the other having a legal limit of $1 million on the one hand; or a single bank having a legal limit of $2,400,000?

A. I would take the single bank with the limit of $2,400,000 for my part if they were a wide-awake commercial bank.

* * * * * * *

Cross-examination.

By Mr. McKenna:

* * * * * * *

[fol. 2940] Q. Now did you ever borrow any money from the Nashville Bank and Trust Company?

A. I don't believe I ever did, no.

Q. Now you stated that in your opinion, to Mr. Farris, that your opinion was that this merger had somehow or other stimulated competition, is that correct?

A. Yes, sir.

Q. Now are you speaking as a mortgage banker, or how do you—what is your qualification on this statement, how do you feel you are qualified to make this statement?

A. From observation of many years, being on Union Street, and seeing that the Nashville Bank and Trust Company, in fact I always—their commercial banking department seemed to be a side line to me, they didn't appear——

Q. You never used their commercial banking department.

A. Yes, I did.

Q. You just told me you didn't.

A. I said I didn't borrow any money from them. I carried an account in their commercial department for a [fols. 2941-3044] number of years.

Q. Was it poorly serviced?

A. No, it wasn't as far as I could see. It was a checking account. I put money in and checked it out. They cleared the checks, but I never borrowed any money from them.

Q. Now within your expertise here as a mortgage banker, I'm trying to find out how this merger stimulated competition so that it assisted you. That's what my question is. What effect did this merger have on you as far as stimulating competition?

A. Well, it immediately got the other two major banks, the large banks in the city to call on people and knocking on doors and wanting my business which——

* * * * * * *

[fol. 3045] Elva H. Short was called as a witness by and on behalf of the Court, was first duly sworn, and was examined and testified as follows:

Cross-examination.

By Mr. Minicus:

Q. Mr. Short, what period of time have you been a bank examiner?

A. For what period of time?

Q. For what period of time have you been a bank examiner?

A. Well, three different times since 1928, September 1.

Q. You have made numerous bank examinations in and [fols. 3046-3053] around the City of Nashville?

A. In the Sixth District.

Q. In relation to the Nashville Bank and Trust Company, Mr. Short, what was your capacity with regard to the last four examinations?

A. The last two examinations I was in charge of the ex-

aminations. I would have to look at the reports to be sure that I was assisting the other examiners in the two previous examinations.

Q. But you were the chief examiner for the last two?

A. I was in charge of the '62 and '63 examinations.

* * * * * * *

[fol. 3054] Q. And will you describe what form 96-D is?

A. That is analysis of assets, liabilities, capital accounts, earnings, and various other information thereon.

Q. And what year does it cover?

A. It covers examination dates 4-6-59, 5-16-60, 9-11-61, 10-15-62, and 11-4-63.

Q. So since Nashville Bank and Trust Company went out of business in August of 1964, this roughly covers the five years preceding the termination of the bank's operations, is that correct?

A. Yes, sir.

Q. Now as you peruse form 96-D, what do you observe with regard to the progress of the bank in its principal accounts or ledger items during that five-year period with regard to growth?

A. You mean asset-wise?

Q. Asset-wise to begin with, yes, sir.

A. Well, on 4-6-59, the total assets were $33,534,000.

Q. Well, I don't think it's necessary to go into detail unless somebody else would want that.

Could you draw a conclusion as to whether the bank had [fol. 3055] grown during that five-year period?

A. It had grown during each of those five year periods.

Q. Each year showed a successive growth, is that correct, Mr. Short?

A. Yes, sir.

Q. So that on 11-4-63, the bank for all of the important asset items was larger than it had been at any time preceding that?

A. That's right, according to this information.

Q. And if you will look at line five which is loans and discounts, what do you observe with regard to the growth of loans and discounts at Nashville Bank and Trust Company during its last five years?

A. They were upward.

Q. And were they substantially upward?
A. Over the five-year period, yes, sir.
Q. What were they in 1959, Mr. Short?
A. $15,946,400, and $20,256,000 in 1963.
Q. And what were they in November of '63?
A. That's what——
Q. That's what you read?
A. That's right.
Q. Were they ever below that figure?
A. I can't answer that question.
[fol. 3056] Q. I mean on the basis of the material you have before you for the last five years?
A. No, not in these totals on this sheet.
Q. Now will you look at the surplus account on line 19, Mr. Short, and tell us in November of 1963, how the surplus account of the bank stood.
A. How it had what?
Q. How the surplus account was with relation to the preceding years.
A. Well, it was $1,700,000 in '63, as compared to $450,000 in '62.
Q. In other words, surplus in the last year of the bank had grown quite substantially, is that correct?
A. It had increased book-wise here.
Q. Now in fact, can you, of all of the many items listed under this condition report, do you find any in which Nashville Bank and Trust Company had declined substantially?
A. That would take some little bit to make a comparison, or analysis of all of these various accounts. If you would specify some particular account without the Judge wants me to take time to analyze——
Q. I thought it might take longer to do that than to have you just run your eye down than to find out whether the statement generally shows substantial growth.
A. I stated that a while ago in assets and liabilities and [fols. 3057-3060] stated here in the capital surplus account, and that covers the growth of your bank.

* * * * * * *

[fol. 3061] Q. Then further on you discuss overdue paper. That's at the beginning of the second paragraph.
A. Yes, sir.

Q. What was the overdue paper listed at the time of your 1962 report, Mr. Short?

[fol. 3062] A. On my 1962 report it was 5.7——

Q. The overdue paper in dollar value.

A. In dollar value? The total overdue paper was, at 10-15-62, $1,193,708.69.

Q. What was the overdue paper in 1963, Mr. Short?

A. $903,014.98.

Q. So there was a reduction in overdue paper in 1963 in excess of a million dollars—from $1.2 million to $900,000-odd? Is that right? There was a reduction in 1963?

A. Yes, sir, there was a reduction, right.

Q. Under the heading on the same page of securities you found that the bank held something like $9,300 in securities that were considered speculative because they were common stocks. That was the only speculative paper of that nature that you found in the security file. Is that right, sir?

A. Let's see what the report says.

Q. That's on page 2 of Form 56, midway down the page.

A. Those assets consisted of stocks making that total, correct?

Q. Was that a very large quantity of stock?

A. I wouldn't consider it as such in a bank like that.

Q. Do you know of any immediate danger to the value [fols. 3063-3064] of that stock as a result of your examination?

A. I do not.

Q. And it is only listed here because it happened to be common stock. Is that correct, sir?

A. It was speculative.

Q. In the third paragraph of Form 56 in your first statement there, what did you find in connection with the credit files of Nashville Bank and Trust Company?

A. Which year are you talking about?

Q. 1963, sir.

A. In the third paragraph?

Q. Yes, in the third paragraph under "Loans and Discounts." Does the statement appear, "Improvement is noted in the credit files"?

A. My comments are: "Improvement is noted in the credit files."

* * * * * * *

[fol. 3065] Q. During the period when you were making examinations at the Nashville Bank and Trust Company, I ask you, did its resources plus it capital accounts amply cover all questionable loans, all classified loans?

A. If you refer to the Form 96 again, Item 45, you will notice that the capital account was never exhausted over and above total classified loans, plus fixed assets.

Q. Were the valuation reserves always sufficient without regard to the capital accounts to cover the classified doubtful and loss loans?

A. According to these reports, yes, sir.

Q. Now, near the bottom of page 3 you have an item which is a ratio of capital accounts to assets at 9.6 in 1963. Was that a favorable ratio?

A. It was above the national average.

Q. Was that also an increase from 1962's examination?

A. Five-tenths of one percent increase.

Q. Will you observe page 4 of the 1963 examination which is in your Form 56, and also for 1962. Will you tell us whether you observe there that current operating income and net income before taxes and dividends increased in every year at the Nashville Bank and Trust Company from 1959 into 1963?

[fol. 3066] A. The figures in this report so indicate.

Q. And net income before taxes and dividends—was that also increasing annually?

A. Yes, sir.

Q. Thank you, sir. Now, will you observe net income after taxes in the 1962 report to the year 1959—that's net income after taxes.

A. 1959?

Q. Yes, sir, that's in the 1962 report. What was the net income after taxes and before dividends?

A. 1959?

Q. Yes, sir.

A. $183,748.21.

Q. What was it for the first eleven months of your examination in 1963?

A. $413,483.34.

Q. So in that final five years of the Nashville Bank and Trust Company's existence, its net income after taxes more than doubled. Is that correct, sir?

A. For the eleven months and four days in '63.

Q. That would indicate it would be higher if you had the whole year, wouldn't it?

A. What?

Q. It would have been higher if you had had the whole year, wouldn't it?

[fols. 3067-3083] A. I can't answer that.

Q. For eleven months it was higher. Was it more than doubled for eleven months in 1963 over what it had been in 1959?

A. It was $413,893.34 for the eleven months and four days in '63 as compared to $118,416.21 for the year 1959.

Q. Thank you. Will you observe the dividend account for 1959 in relation to that for 1963. Dividends paid on common stock. What were the dividends paid in 1959, Mr. Short?

A. $63,332 according to these figures.

Q. What were they for the first eleven months of 1963?

A. $106,164.50.

Q. So they had increased substantially; is that correct?

A. They increased the difference between those two figures.

* * * * * * *

[fol. 3084] Q. Yes, I'm speaking just for the moment—I'm coming to that, sir—of the collateral mix, that is the distribution of the collateral and the distribution of the borrowers and the proportion of collateral held by the bank.

I think——

A. You are referring specifically to item one at the top of page seven?

Q. Yes, sir.

A. Reading from the report:

> "Approximately 39.6 percent of the loans are predicated on real estate, and 12 percent is represented by consumer paper. Other types of collateral consist of listed and unlisted securities and assignment of life insurance policies."

Q. And you mentioned the loan distribution as being satisfactory. What I'm after, Mr. Short, is whether you had any criticism in connection with those two items.

A. I don't know as I understand just what you mean. Do I have any criticism?

Q. Well, when you noted the proportions of the various types of collateral loan, collateral supporting the loans, and the distribution of the persons borrowing, you noted that, and I was wandering if you found anything wrong with it.

A. No, sir, I did not.

* * * * * * *

[fol. 3085] Q. I asked you what the procedures were or what approvals were necessary at Nashville Bank and Trust Company in extending and making such loans.

A. Comments on the report stated that:

> "Active officers grant loans to established customers without prior approval or authorization. Large and important applications are considered by the executive committee prior to the disbursement of funds, and all loans are subsequently approved by the executive committee. The board approves all advances at each quarterly meeting."

[fols. 3086-3089] Q. Have you found that to be generally routine procedure in banks you have examined?

A. Well, in some banks they operate on that basis. Some have various limitations of active officers; some have limitations of the finance committee; others have to be presented to the board. It's pro and con.

Q. Did you find anything to criticize in this procedure, sir?

A. I don't see anything on this page with reference to it.

Q. Now was the collateral for loans at Nashville Bank and Trust Company reviewed and appraised periodically?

A. I don't have any comments here with reference to that. It's been two years and seven months since I was in the bank, and I don't recall.

Q. To refresh your recollection, I draw your attention to item six there.

A. Yes, I beg your pardon. That answer is yes.

* * * * * * *

[fols. 3090-3100] Q. In your opinion, Mr. Short, was the proportion of delinquencies for installment credit at Nashville Bank and Trust Company abnormal to an institution of its nature?

A. It doesn't appear to be.

* * * * * * *

[fol. 3101] By Mr. Minicus:

Q. Now your 1963 report, Mr. Short, contains an analysis of loans subject to classification, is that correct, sir?

A. Yes, sir. You are referring to page 7-3 now?

Q. That is correct, Mr. Short.

Now in connection with that analysis, since your previous examination in 1962, were loans—now I mean the classifi- [fols. 3102-3106] cation of loss loans—reduced more than half since the 1962 examination?

By the time you got to the 1963 examination, had the loss loans been reduced more than half?

A. Yes, sir, that's right.

Q. And were, in the same period, the doubtful loans reduced substantially

A. Yes, sir, they were.

* * * * * * *

[fol. 3107] Q. Would you say that the bank's charge-offs against reserves in the light of the type of credit risk it's alleged to have assumed by the government——

A. In your question a minute ago, you stated that they made loans to people who had been turned down by other lending agencies.

Q. Or other marginal borrowers.

A. In the first place, I do not know of any loans being made by the Nashville Bank and Trust Company that were turned down other places. I do not make it a policy to visit other banks and ask them if they had had an application for Joe Doaks' loan and turned him down, and neither have I had——

Q. I didn't question you on that. I said assume those facts, Mr. Short.

A. I can't assume any facts. Neither do I have any recollection of any officer of Nashville Bank and Trust Company

telling me that they made loans to this fellow because he had been turned down somewhere else or had been turned down.

[fols. 3108-3110] Q. Do you have any comments in here though concerning inadequate credit information?

A. Yes, sir. Now that's something else. I do have in the report——

Q. And are some of these loans that you consider marginal risk borrowers?

A. At the time this report was written, yes, sir. At least not properly supported for the reasons stipulated in the report.

Q. But there are such people, are there not, that borrowed from this bank?

A. According to this report, I'd say some of these loans were marginal, yes, sir, bound to be.

Q. Yes, sir.

A. Or I wouldn't have criticized them.

Q. Now in light of that, and in light of the fact that you have classified a large number of these loans as marginal, have you found that the charge-offs against reserves were abnormally high?

A. Well, they increased the two years that I examined them over previous amounts collected. About them being abnormal, I wouldn't know about that, but they did increase.

* * * * * * *

[fol. 3111] Q. I'm talking about your computations yesterday when you found that for 1961 the net loan charge-offs as a percent of total loans was 0.3 percent, and in 1962, when the net loan charge-offs as a percent of total loans was 0.4 percent, and in 1963 when you found that the net loan charge-offs as of a percent of total loans was 0.2 percent.

I ask you, does that show, with regard to total loans, any increase?

A. Yesterday we were figuring the ratio of net charge-offs on page four with respect to the total loan of those respective years. That is the net charge-off. That's one thing.

Q. And that's what I'm asking you about, are they ab-

normally high for a bank that was doing the kind of credit business this bank was doing?

A. These figures on page four were not abnormally high.

Q. Thank you, sir.

A. In my opinion.

Q. Thank you.

A. But I would like to also state that the figure in one thing and the total referred to in paragraph one on page [fols. 3112-3113] two of these reports is another thing.

Q. Yes, sir. But you have testified, have you not, that these charge-offs were not abnormally high in your opinion?

A. With respect to the net charge-offs.

* * * * * * *

[fol. 3114] Q. Just roughly speaking. Did you visit it often?

A. The Nashville Bank and Trust Company?

Q. Yes.

A. Sometimes I was in there between examinations, yes, sir.

Q. When you were in there for examinations, you were in there for a considerable period of time. Is that correct, sir? Just approximately. Was it two weeks, three weeks?

A. Well, during the two years I was in charge I was there approximately two weeks, I think. Other times I would be a week when I was assisting somebody else.

Q. And you had opportunity to observe the premises as you went in and as you stayed there and as you performed your work there. Is that correct?

A. Well, the area in which I worked I did, yes, sir.

Q. You had assistants and aides working in other areas. Is that correct?

A. Yes.

Q. So that your entire staff had the ability and did take a pretty good look at the premises?

A. I can't answer that question. There were boys upstairs and downstairs working, and whether they observed the premises, I can't say.

[fol. 3115] Q. They saw them all over a two-week period, did they not?

A. Quite a few of them, yes.

Q. Did any of your aides ever report to you an unsatis-

factory condition of the premises or of the way the files were kept?

A. I don't have any recollection of that.

Q. Would you recall it if they had reported such to you?

A. I couldn't tell you whether I would or not after two years and seven months.

Q. Let me refresh your recollection, then, Mr. Short. Will you observe on page 8 two lines from the bottom of your report, and read what it says there, beginning, "Furniture"?

A. "Furniture and fixtures in the main offices and branch are modern and suitable for the needs of the institution."

Q. And the rest of it?

A. Additions since the last examination amounted to $13,089.70 net."

Q. Is that statement in your report for the previous year?

A. Each year?

Q. Yes, sir.

[fol: 3116] A. Yes, sir, I suppose it is. I will look.

Q. Does that refresh your recollection as to whether any of your aides reported any unsatisfactory conditions or fixtures or methods around the premises?

Mr. O'Malley: I object to the word "methods," Your Honor. I think that is going beyond anything Mr. Short has testified to. We have been talking about furniture.

Mr. Minicus: And the materials used; the fixtures.

The Court: Fixtures, yes; materials. Any unsatisfactory conditions.

Mr. Minicus: Of the premises, yes, sir.

The Court: Of the premises, yes.

A. They didn't report anything to me.

By Mr. Minicus:

Q. Thank you, sir. Will you kindly observe, Mr. Short, page 10 of your report for 1963. What is the heading at the top of the page there, sir?

A. "Trend of Deposits."

Q. And under "Trend of Deposits" there is a table that has "Public Funds and Other Deposits." Is that correct, sir?

A. Total deposits, yes.

Q. I am looking under "Other Deposits." You have a [fol. 3117] heading there, "Other Deposits"?

A. That's right.

Q. How is that broken down, sir?

A. Into "Demand Deposits" and "Time Money," time deposits.

Q. Will you tell us, looking at "Demand Deposits," whether demand deposits increased in every year of the six-year period covered by this report?

A. Demand deposits were down in 1963 at the time of our examination.

Q. But that did not cover the entire year, did it?

A. No, sir.

Q. And these are averages?

A. What?

Q. These are averages by quarters, are they not, Mr. Short?

A. That's right.

Q. What were the demand deposits averages in 1960?

A. 1960, the average amounts of deposits were $18,810,-000.

Q. Did they increase in 1961?

A. $19,719,000.

Q. Were they still higher in 1962?

A. They were $19,810.000.

Q. So, year after year, those averages for demand de-[fols. 3118-3123] posits did increase after 1960; is that correct, Mr. Short?

A. According to those figures, that's correct.

Q. Is there any reason why we should question these figures, Mr. Short?

A. Sir?

Q. Is there any reason why we should question these figures?

A. I don't have any reason to.

* * * * * * *

[fol. 3124] The Court: Then I misread your position and am mistaken about your entire theory in this case.

Mr. O'Malley: I beg your pardon. We are not taking the position that Nashville Bank and Trust was an aggressive

competitor. Is that the question the Court addressed to me?

The Court: That's what I said. That's what you were intimating a moment ago.

Mr. O'Malley: By no means.

The Court: But you admitted that Primm aggressively went out and got business.

Mr. O'Malley: I said that Primm was the only one who aggressively sought it and he was pretty much after the food accounts.

The Court: I think you had better beat a hasty retreat.

Mr. Minicus: In light of the statement that Mr. Primm was the only one who sought business aggressively——

The Court: Of course there is testimony that Hackworth also sought business.

Mr. Minicus: I am going to read this paragraph, Your Honor.

The Court: And other persons, too. Hackworth and [fol. 3125] Primm and other individuals in the bank after Hackworth came in.

Mr. Minicus: In light of the objections, I would like to read this short paragraph into the record in Mr. Short's report of his Conclusions and Recommendations.

> "President Hackworth continues as the executive officer in charge of the bank's affairs. He is interested in obtaining new business and appears somewhat lenient in extending credit for this purpose. Apparently some of the junior officers also follow the same practice, and it is evident that they are likewise not properly servicing the loan portfolio. Some improvement is noted in the credit files and a slight reduction has been made in the total of criticized loans. However, the amount involved continues to be rather high. Reduction in previously criticized loans may be regarded as fairly satisfactory, however. The improvement, however, has been largely offset by the addition of items previously unclassified, further advances, and new extended credits."

Q. How did you ascertain that Mr. Hackworth and the younger officers in the bank were, in their aggressive search for new business, extending credit that might be subject to

[fol. 3126] criticism? I want you to devote your answer responsive to my question, Mr. Short, to how it was ascertained it was Mr. Hackworth and the younger officers who were desiring to get this new business.

A. Based solely on information that I picked up in the bank as to who might have made this loan or who approved it and what have you.

Q. Some of which was documentary information?

A. I beg your pardon?

Q. Some of this was documentary information?

A. I think principally oral information.

Q. Principally oral? From people in the bank?

A. Yes.

Q. They told you they were trying so hard to get new business in some instances——

A. They didn't tell me that.

Q. How did you find that out, then? That's my point.

The Court: What page is that on?

Mr. Minicus: That's on page 17, sir, the Conclusions and Recommendations following page 16.

By Mr. Minicus:

Q. You say here: "He is interested in obtaining new business and appears to be somewhat lenient in extending credit for this purpose and has persuaded some of the younger [fol. 3127] officers to the same attitude." I want to know how you found that out.

A. "And apparently some of the junior officers follow the same practice."

Q. Your report is that he had persuaded them, I believe—your '62 report, if you want to look at that one.

A. Those comments were formulated strictly on information I had at that time.

Q. How did you derive this information? Was it documentary?

A. That's what I am trying to tell you. "So-and-so approved that loan; so-and-so approved that loan. The other loan was approved by the Executive Committee." That was pointed out to me.

The Court: Which report is this?

The Witness: 1963, Your Honor.

[fol. 3128] Mr. Minicus: Now this report was made at the end of '63?
You've got two reports there, trust report and commercial
The Witness: Page A, immediately after 18, Your Honor.
department.
The Court: All right.

By Mr. Minicus:

Q. Now this examination was made just a few months before the Nashville Bank and Trust Company contracted to merge with the Third National Bank.

At the time of this examination, what comment did you have to make, Mr. Short, relative to the Nashville Bank and Trust Company's earnings?

A. "Earnings of the institution continue to be satisfactory with a substantial portion of same being retained and capital asset ratio of 9.6 percent is reflected."

Q. Was that capital assets ratio of 9.6 percent a fairly substantial improvement over what existed in 1962?

A. That is an increase of five-tenths of one percent.

Q. On that type of a ratio, is that a fairly good increase?

A. It's a little above the national average.

Q. It's above the national average?

A. Yes, sir.

* * * * * * *

[fol. 3129] Q. And on the same page, what conclusion did you reach as to the competency of the directorate under management and control?

A. My conclusions—that's item one under management and control?

Q. Yes, sir.

A. "The directors are composed of men of independent judgment who are influential in the community. The executive committee is largely responsible for policy determination, the Chairman of the Board Hill and President Hack-
[fols. 3130-3132] worth exerting the most influence.

Q. Now I'm going to ask you, Mr. Short, what was your conclusion regarding the number and compensation of officers and employees? Were they regarded as either inadequate or excessive?

A. You are referring specifically to item four?
Q. Yes, sir.
A. The answer is satisfactory.
Q. And you found that the number of officers and employees and their compensation was regarded as satisfactory, is that it?
A. That's the way it's answered.
Q. Is there any reason to question the answer?
A. No, sir.

* * * * * * *

[fol. 3133] Recross-examination

By Mr. Minicus:

Q. Mr. Short, if you, in your subjective judgment, classified every loan in that bank as doubtful and there was not a single charge-off in that year, how much money would the bank lose as a result of the classifications?
A. If there were not a single charge-off, you answered your own question, they wouldn't lose anything.

* * * * * * *

[fol. 3134] William A. Robson, a witness called to testify by and in behalf of the Intervenor, after having first been duly sworn, was examined, and testified as follows:

Direct Examination

By Mr. O'Malley:

Q. What is your address, Mr. Robson?
A. Business address?
Q. Yes, sir.
A. 167 North Main Street, Memphis, Tennessee.
Q. What is your occupation?
A. Regional Administrator of National Banks.
Q. Mr. Robson, will you trace for us your education and experience in the bank supervision—in bank supervision?
A. Well, I'm afraid my formal education was interrupted

at an early date because of the loss of my father and the general economic conditions which existed in the twenties, but my grandparents were able to give me one year of high school, and at the end of that time, I found it necessary to become gainfully employed, so I was fortunate enough to obtain a clerical position with the Comptroller of the Currency in the office of the District Chief of the National Bank Examiner in Kansas City.

Thereafter, I was able to pick up additional high school [fol. 3135] credits in night school, and was also able to talk my way in the Kansas City School of Law as a special student where I received one year of legal education before the money ran out.

I have been continuously employed by the Comptroller of the Currency since May of 1962 with two, two-year exceptions. In 1930 and '31, I was in the credit department of the Jenkins Music Department in Kansas City handling collections and handling money and two-year period while I served in the United States Navy.

In 1939, after having been with the Comptroller's office those intervening years with the exception of the Jenkins Music Company, I was appointed as assistant national bank examiner with headquarters in Kansas City, and later on moved to Denver. In 1948, I received a commission as a national bank examiner, and worked out of Denver until 1956, which I was transferred to Omaha.

In 1958, I received an appointment as an assistant chief national bank examiner in Washington, D. C. which is the commencement of my supervisory experience. In that position, we had the responsibility to review all examination reports for assigned federal reserve districts, and to initiate whatever supervisory action was appropriate based on the report.

Then in April of 1962, I was appointed District Chief National Bank Examiner of the 8th Federal Reserve Dis- [fol. 3136] trict in St. Louis. Later that year, we rearranged our supervisory boundaries and the St. Louis office was moved to Memphis, and became the Regional Office for the 8th National Bank Region, and my title was changed to Regional Chief National Bank Examiner.

In 1964, the title was changed again in conjunction with a series of delegations from the Comptroller sending new

powers down to the regional level. My new title then became Regional Comptroller of the Currency, and early this year, ~~the title~~ was changed again to Regional Administrator of National Banks.

Q. Now what are the duties and responsibilities of a regional administrator of national banks?

A. Well, primarily my duties are to carry out the policies, objectives and directives of the Comptroller of the Currency. That is in the overall sense.

Q. Now precisely what responsibilities do you have in carrying these out?

A. Probably the main responsibility is the supervision of the national banks in my region. This involves personal responsibility for determining and invoking examination procedures which are adequate to correctly reveal to the Comptroller of the Currency the condition of the national banks.

[fols. 3137-3151] Other delegations include the power to approve and issue certificates for increases in capital of national banks by way of stock dividends and by way of sale of new shares.

We also determine in the regional office who shall examine national banks, and when they will be examined and how large a crew will be involved.

We are also responsible for initiating investigations and applications for new charters for new branches, for trust powers, for changes in titles of banks, for changes in locations of banks, and branches.

We also attend to a mass of correspondence which we receive from banks and others on a myriad of banking subjects. There are frequent submissions of legal questions which we handle within the scope of our knowledge, and others we send on up to the Washington office.

We have the responsibility also of recruiting, employing, training, and promotion of national bank examiners and in some cases dismissal. This also applies to our clerical help in the office.

* * * * * * *

[fol. 3152] By Mr. O'Malley:

Q. Mr. Robson, the question was: Would you give us your opinion as to the management of Nashville Bank and Trust Company based upon your review of these examination reports and the facts contained therein?

* * * * * * *

[fol. 3153] A. Based upon the showing made in these four reports, together with the fact that there has been a change of management in the bank within the last seven or eight years, and the 1962 report which showed a doubling in classified assets, the showing throughout the reports and throughout this testimony that the Nashville Bank and Trust Company had no credit department, that the Nashville Bank and Trust Company had scarcely any credit files——

* * * * * * *

Q. I limited the question to the report, Mr. Robson.

[fol. 3154] A. To the report?

Q. Yes, sir.

A. Based upon the trends shown in these four reports, the 1960 report had classified assets of about fifteen percent of capital structure. The 1961 report, about sixteen percent of capital structure was offset by classified assets. In the 1962 report, thirty and four-tenths percent. The 1963 report, twenty-seven percent.

In these reports are listed a myriad of credit file exceptions. This leads me to the conclusion that the management at the upper levels of this bank was weak and inept.

* * * * * * *

[fol. 3155] By Mr. O'Malley:

Q. Mr. Robson, is there a relationship between the examination of a state bank in the classification of loans in a state bank, and that in a national bank?

A. Yes, we follow the same definition of classification. As far as that goes, the overall condition of a bank, be it state or national, is of the same concern to the supervisory authorities. At some point along the line of deterioration,

the supervisory authority must take action. It is a question of where do you start.

Q. Where do you start in the national banking system, Mr. Robson?

A. It is a rough rule of thumb. But when the classified assets in a national bank reach the point where they amount to twenty percent of the capital structure of the bank, we [fols. 3156-3158] would normally write a letter to the board of directors or take some other form of action. But it depends upon all the surrounding facts, not just the degree of classified paper.

It depends upon assessing the quality of the management of the bank and any trends that might be taking place. We might start at fifteen percent if it is a great big bank, a $40 million or $50 million bank, where we see a trend developing that needs to be turned around.

Q. Did you discern such a trend in the Nashville Bank and Trust Company?

A. I think it is positively indicated by this report.

* * * * * * * *

[fol. 3159] The Witness: I am familiar with the availability or the scarcity of bank management.

By Mr. O'Malley:

Q. I ask you this, Mr. Robson: Considering that prior to the merger agreement in this case the Nashville Bank and Trust Company had changed ownership and was in the hands of individuals who did not have the time to actively manage the bank personally; that the chairman of the board who was responsible for much of the business of the bank had resigned; considering further that the only full-time outside business solicitor had resigned before the merger agreement; further assume that the president of the bank who was an active business-getter in the organization was in ill health and has since died.

Assuming that four of the six department heads of the bank were 65 years of age or over at the time of the merger; and further considering that there is no evidence that any of the personnel of Nashville Bank and Trust Company were sufficiently trained in commercial banking to assume

the presidency of the organization; and further assuming an officer salary scale substantially under that of the three larger banks in Nashville;

Based upon your experience and based upon the conclusions you have drawn from the facts contained in those reports, what would be the possibility of replacing the man- [fols. 3160-3161] agement of the Nashville Bank and Trust Company?

* * * * * * *

Q. The question is what would be the possibility of filling those management positions which must be filled at Nashville Bank and Trust Company prior to the merger?

* * * * * * *

[fol. 3162] The Court: I think he is competent. Go ahead.

A. We are talking in terms of replacing six or seven top-flight officers?

By Mr. O'Malley:

Q. That's correct, sir.
A. Over a relatively short period of time?
Q. That's correct, sir.

* * * * * * *

A. That would present an impossible situation, in my opinion.

By Mr. O'Malley:

Q. Can you explain why in more detail, Mr. Robson?
[fol. 3163] A. In the first place, what did Nashville Bank and Trust Company have to offer? In the second place, they had to offer less than other banks in Nashville. In the third place, where are you going to get experienced bank personnel of this caliber, someone who occupies that kind of position already in some other bank?
this caliber, someone who occupies that kind of position al-

Why could you attract six or seven people from jobs in banks where they are acting in these capacities to come to

the Nashville Bank and Trust Company with all its problems?

Q. Mr. Robson, I show you Defendants' Exhibits 15 and 44, which are a management organization chart, and a salary chart of the various officers.

A. Yes, sir.

Q. Can you add anything to your statement or your opinion as a result of viewing these exhibits?

* * * * * * *

[fol. 3164] A. Looking at this salary scale, we have people here who have been with the bank thirty-three years, the banking department, drawing $7,900; five years, $5,600; thirty-nine years, $9,700; eighteen years, $10,000; thirty-nine years, $7,400.

Last year I hired twenty-five new bank examiners at $6,278 a year fresh out of college.

Q. That is in this region?

A. In this region. This salary scale obviously wouldn't be attractive in trying to replace six or seven officers.

* * * * * * *

[fols. 3165-3167] Q. Mr. Robson, there has been testimony that the Nashville Bank and Trust Company did not have a continuous audit. Do you consider a continuous audit essential in a bank the size of Nashville Bank and Trust Company?

A. I certainly do.

Q. Approximately how many banks do you supervise, sir, which have deposits of over $40 million?

A. I can think of about thirty-five of them offhand.

Q. Do any of these banks not have continuous audits?

A. They all have continuous audit programs.

* * * * * * *

[fol. 3168] By Mr. O'Malley:

Q. Mr. Robson, I believe we were talking about continuous audits. What is the importance, if any, of the continuous audit to a bank?

A. There are several reasons why a continuous audit is

important. One reason is that it is a continuing preventive measure against defalcations. Another is that it is important to assure the management of a bank that its books and transactions are properly recorded from an accounting standpoint.

Q. Is this of benefit to the customer of the bank?

[fol. 3169] A. Yes. It eliminates errors.

Q. I refer you to Exhibits GX-181 and GX-70.

A. I have 70—yes, here it is—181.

Q. From these reports, Mr. Robson, will you tell us what the actual valuation reserves of Nashville Bank and Trust Company and Third National Bank were at the end of the calendar year 1963?

A. The bad debt reserve of Nashville Bank and Trust Company at the end of the year 1963 was $1,188,302.04. The bad debt reserve of the Third National Bank at the same time was $2,767,944.55, in addition to which they had other valuation reserves on loans of $4,338,705.98.

Q. Did Nashville Bank and Trust have any other valuation reserves on loans?

A. No, sir.

Q. Why is there a separate classification of valuation reserves? Why are they two separate classifications?

A. The bad debt reserves pursuant to Internal Revenue Mimeograph 6209 is a special reserve which the Treasury permitted to be established commencing as a result of Mimeograph 6209 in 1945 or '46, recognizing that banks in good years should be allowed to set aside a part of their profits to take care of their losses in bad years.

[fol. 3170] Transfers to this reserve are tax-free. While transfers to the valuation reserve of the Third National Bank are after the payment of taxes.

Q. Taxes must be paid when they try to set up this additional reserve for bad debts?

A. That's correct.

Q. What is the significance of the respective sizes of the Internal Revenue reserves of these two banks?

A. One thing that is significant, highly significant, is the fact that the Nashville Bank and Trust Company with loans of some $20 million outstanding had a reserve account of $1,188,000, which is approximately five percent of the total loans outstanding.

I don't have a figure on the total loans outstanding for the Third National, but the loans must be at least $200 million. This would indicate a reserve of only 1.5 or 1.6 percent.

Q. That is the Internal——

A. The Internal Revenue Code. What this certainly signifies is that sometime in the twenty consecutive year period on which the Internal Revenue reserve is established, that sometime in that period the Nashville Bank and Trust Company must have sustained some very, very substantial losses.

By the way, this reserve is based upon the bank's own actual experience in net losses. In figuring this reserve, the [fol. 3171] bank was originally permitted to take any twenty consecutive years after the year 1927; figure your loss percentage for each year based upon losses for the year less recovery; and at the end of the twenty years add up all of those percentages, divide by twenty, and this resulted in a loss experience factor.

The loss experience factor for Nashville Bank and Trust Company is 5.6 something, while that of the Third National is 1.6.

Q. Thank you. The testimony in this trial, Mr. Robson, is that the Nashville Bank and Trust Company maintained few credit files and that it had no credit department. How many banks of $40 million or more in assets do you supervise which have no credit department?

A. All the banks of $40 million or more which I supervise do have credit departments.

Q. What about credit files?

A. Every bank I supervise has credit files—even a million-dollar bank. I would be shocked if they didn't have.

Q. What is the importance of them to a bank supervisor?

A. Experience has taught us all that you can't successfully lend money except on the basis of informed judgment. Waiving proper credit information is one of the cardinal [fols. 3172-3173] sins of banking, as I think any self-respecting bank officer would not permit the accumulation of $20 million of loans without proper credit files and a proper credit department.

* * * * * * *

[fol. 3174] By Mr. O'Malley:

Q. Can you answer the question, Mr. Robson?

A. Would you have the question repeated, please?

(Reporter read the following question: "Q. From your review of the examination reports of Nashville Bank and Trust Company, based on that, do you feel that the credit files in that bank were adequate?")

The Witness: I feel they were woefully inadequate. The [fol. 3175] examination report for 1962 contains three and a half or four pages of credit file exceptions; and among the names you will find on these exceptions, about every other one is over in the classified loans.

So you can tie the lack of credit information to the resulting classification of loans.

By Mr. O'Malley:

Q. Does the amount of credit exceptions and classifications tell you anything as a bank supervisor of the capability of the lending officers of the Nashville Bank and Trust Company?

A. As I have said, I am unable to understand how any self-respecting bank officer can grant loans and supervise them on the basis of informed judgment without credit files —I mean properly constituted credit files, including successive financial statements and a spread sheet to lay these side by side and compare them and earnings statements and reconcilement of the capital accounts of the borrower and memorandums of the bank officers as to the use of the funds and the mode and method and manner of repayment.

I think these are all essential.

As I said before, the dismissal of this information is a cardinal sin in banking.

Q. Is the ratio of classified loans to total loans a valid measuring device?

A. We use it all the time. It is a valid measure.

[fol. 3176] Q. What was the ratio of classified loans to total loans at Nashville Bank and Trust in the four years covered by those reports?

A. In the 1960 report classified loans amounted to fifteen percent of the capital structure.

Q. Pardon me—classified loans to total loans, Mr. Robson.

A. Total loans?

Q. Yes.

A. I don't know whether I have that. Yes. In 1960 I made a notation of this. In 1960 the classified loans amounted to 3.4 percent of the total loans. In '61 the figure was 3.7. In 1962 it was 7.3. And in 1963 it was 6.8.

[fol. 3177] Q. Now as a banking supervisor, what do these ratios indicate to you?

A. They indicate to me there's too much classified paper in the bank, too much classified paper in the bank.

Q. Does the increase in the latter two years over the first two years signify anything to you?

A. The four figures there indicate that a derogatory trend has set in.

Q. Now what is the significance of a trust department to a bank, Mr. Robson?

A. Well, I'm afraid that in too many cases, the trust departments are merely service institutions to tie business to the bank in the commercial department.

Q. To whom do the assets of a trust belong?

A. They belong to the beneficiaries.

Q. Does the bank receive the income from the assets?

A. No, sir.

Q. What is the income to a bank of a trust department?

A. Well, the income to a bank of a trust department is based upon the fees charged to the individual accounts.

Q. And that is for servicing the accounts?

A. For servicing the accounts.

[fol. 3178] Q. Now I'd like to refer to the examination reports of the Nashville Bank and Trust Company and ask if you have reviewed the trust section.

A. Yes, I have.

Q. Of these reports?

A. Yes, I have.

Q. Have you noticed any criticism of trusts?

A. Yes, sir.

Mr. Minicus: Objection, Your Honor. There was no showing that the witness was a trust examiner, was noted by counsel earlier that the trust examiners are quite different

individuals from those of banking examiners, general banking examiners.

Mr. O'Malley: If the Court please——

By Mr. O'Malley:

Q. Mr. Robson, in your position as regional administrator, do you supervise trust examiners?

A. We do.

Q. Do you review trust reports?

A. I do.

Q. To the same extent that you do commercial banking reports?

A. In the same manner.

Mr. Minicus: I continue to object to him testifying and evaluating the trust material that was in the original re- [fol. 3179] port when Mr. Short was available to question him on that testimony.

The Court: Well——

Mr. O'Malley: Mr. Short did not conduct the trust examination, Your Honor.

Mr. Minicus: Mr. Short was the certifying officer. He was much closer than——

Mr. O'Malley: He was not the trust examiner, and we brought that out.

The Court: Who did certify it?

Mr. O'Malley: Whoever's name is on that.

The Court: Never mind, whoever it was. It was not Short.

Mr. O'Malley: No, sir.

The Court: Go ahead and let him answer.

By Mr. O'Malley:

Q. What is your assessment of those trusts that are criticized?

A. Well, there are three accounts of particular significance, and two of these accounts have been subject to criticism for years in these examination reports.

Q. I believe they start on page eight of the trust section.

A. Page eight?

Q. Yes, sir.

A. I'm looking for that recapitulation of contingent lia-
[fol. 3180] bilities.

Mr. Minicus: While this is going on, Your Honor, I would like to once again point out that counsel objected to my examining the auditor of the reports in detail, because it was all in the reports, and the Court sustained me, and we are going through the same procedure here with a man who didn't even write the report.

Mr. O'Malley: No, we are not, Your Honor. We are not asking him to read off Mr. Short's——

The Court: What are you asking him?

Mr. O'Malley: I'm asking him his judgment of these trusts as they relate to Nashville Bank and Trust Company in its handling of trust accounts.

The Court: Well, you mean his judgment on facts disclosed in this report?

Mr. O'Malley: Yes, sir.

The Court: Not the opinions expressed, but the facts?

Mr. O'Malley: Yes, sir, the facts.

Mr. Minicus: And counsel has argued that the facts speak for themselves; he's argued that repeatedly.

The Court: I think it's a little bit different problem. What you were doing was asking the witness who prepared the report simply to restate conclusions which he had al-
[fol. 3181] ready set forth in his report without commenting or explanation.

Mr. Minicus: That's very true. I was attempting to get him to expatiate on it. The fact that he wouldn't expatiate was not my fault, but I don't think that justifies putting on an employee of a party and asking him to explain the reports.

The Court: It's actually not to explain the reports as I understand it, but to get the opinion of this witness independently in order to reinforce the conclusions reached by the other witness.

That's permissible, isn't it?

Mr. Minicus: I think it's been contradictory of the concluions of the other witness, Your Honor.

The Court: Well, in some aspects, perhaps, but not altogether.

Mr. O'Malley: I don't find that recapitulation sheet myself, Mr. Robson.

The Witness: Let me look in the '62 report.

The Court: Well, let's move along now, we're wasting time.

By Mr. O'Malley:

Q: Can you refer generally to the trusts as they start on page eight? You have reviewed this report, have you not?

[fol. 3182] A. I have.

Q. Give us your assessment of those.

A. Three accounts of significance, one T-846, which is a perpetual care fund, and according to the laws of the State of Tennessee, when the cemetery association sells a lot, twenty-five percent of the proceeds of the sale must go into the perpetual care fund, and in this case, the cemetery association withheld something on the order of seventy thousand dollars in such proceeds for several years, and this violated the Tennessee statute.

The Tennessee statute also stipulates the kind of investments which may be made by the cemetery association, and those investments are limited to the legal list or so-called prudent man rule which are on the statute books of the State of Tennessee, and in 846, there are one, two, three, four items of illegal investment which the trustees allowed to be put into the account, in addition to the failure of the cemetery association to pay in all of the funds according to the prescribed percentage.

In this of course the trustee acquiesced in the violation of law.

Q. And what is your assessment of the management of the trust insofar as the trust criticizing this report is concerned?

A. In my opinion, allowing the cemetery association to [fol. 3183] commit these violations of law is—this is gross impropriety. A trustee associating himself in this kind of a violation has the choice of either acquiescing or refusing to accept the investment or resign from the trust.

A trustee who advertises in the newspaper that he is an expert in handling trusts, this is not the act of such a trustee.

Q. Thank you very much, sir.

A. The same is true of the 1492 account, and the same is

true of the 1003 account. There are illegal investments in all three.

Q. Thank you very much, sir.

A. Non-conforming investments.

Q. Now, is your opinion of the management of these particular trusts, the other two trusts, the same as the first one you commented upon?

A. Right, the same thing is true.

Q. Now do you have any basis, Mr. Robson, for comparing the performance of Third National Bank and Nashville Bank and Trust Company in the trust area?

A. Yes, since the merger, the Third National Bank has recovered all of the funds which had not been paid in on a timely basis from the sale of the cemetery lots. They have stopped the cemetery association from violating the law in the way of putting in non-conforming investments, and they [fol. 3184] have gone a long way toward cleaning up the non-conforming investments they inherited at the time of the merger.

Q. And do you have any basis for comparing the performance of Third National Bank and Nashville Bank and Trust Company in the commercial area, commercial banking area?

A. Yes, I——

Mr. Minicus: I object to these questions, Your Honor. In the first place, the witness' testimony is entirely addressed to events occurring after the merger. Secondly and much more importantly, there was a subpoena went out to the Comptroller for the Third National Bank's reports. They were not responded to with regard to the trust department activities. We have no way of making this analysis ourselves.

We believe if he's going to question this witness on the trust department activities of Third National Bank, he must answer for his violation of the subpoena.

The Court: Is this correct, Mr. O'Malley?

Mr. O'Malley: Your Honor, the reports—I called for the reports from Washington, I got them when I was there. I didn't personally handle it; my secretary got them, blocked them out in accordance with the position of the Court, and sent them down. I was not aware that the trust department [fol. 3185] reports were not sent to them. If they have not

been, we are perfectly willing to supply them, but as soon as we went back to Washington on the recess, I had my secretary do that.

The Court: And they were sent where?

Mr. O'Malley: Down here to Mr. Minicus air mail.

Mr. Minicus: We didn't get the trust department reports. They were excluded from the submittal, Your Honor. All we had were the general banking reports.

Mr. O'Malley: It may have well been that that's what the subpoena called for, the general examination reports.

Mr. Minicus: Not at all. We asked for the examination reports.

Mr. O'Malley: They are handled at separate times, and that may be why they weren't sent.

The Court: You have not received them?

Mr. Minicus: I have not received them. They were not in the envelope containing the examination report.

The Court: There's been a misunderstanding.

Mr. O'Malley: We'll be pleased to submit them, but I might say, Your Honor, that this question had nothing to do with trust department reports.

The Court: Well, go ahead.

[fols. 3186-3189] By Mr. O'Malley:

Q. I asked do you have any basis for comparing the Third National Bank and Nashville Bank and Trust Company in the commercial banking area?

A. Yes, since the merger, the Third National Bank has sustained a loss of $121,000 on loans which came in through the merger, and the remaining—the remainder of the total classified loans that they acquired were $1,462,000, and they sustained a loss of $121,000 on that group of loans and have gotten rid of all of the rest.

Q. What do you mean by gotten rid of?

A. They are no longer in the bank either being paid or refinanced some place else.

Mr. Minicus: I object to that on the grounds of relevancy and materiality. What Third National Bank had to do with those loans had nothing to do with the operation of Nashville Bank and Trust Company.

* * * * * * *

[fols. 3190-3192] Q. Mr. Robson, I believe you said you did not have the FDIC reports available at the time of this merger?

A. No, sir.

Q. Were you present in this courtroom and did you hear the testimony of Dr. Pugh, Mr. Hardcastle, and Mr. Webb?

A. Yes, sir.

* * * * * * *

[fol. 3193] Q. Mr. Robson, based upon your present knowledge, what would be your opinion as to the competitive impact of this merger upon the community?

* * * * * * *

A. In my opinion the facts brought our during this trial by the witnesses you mentioned have indicated to me that there was less competition between the Nashville Bank and [fol. 3194] Trust Company and the three large banks here in town than I felt was true before. So my conclusion would be that the competitive impact, knowing what I do know—that the competitive impact on Nashville would be much less than I thought it was before.

Mr. Minicus: I submit, Your Honor, we now have two opinions from this witness with respect to the competitive impact.

Mr. O'Malley: Which are not contradictory, Your Honor.

The Court: They are not contradictory. I interpret this to mean that he is stronger in his belief now than he was before.

By Mr. O'Malley:

Q. Is that correct, Mr. Robson?

A. My recommendation would be the same, except I would express it in stronger terms.

Q. What in your opinion is the impact upon the convenience and needs of this community of the merger?

A. In my opinion the community benefited greatly from this merger.

Q. Why?

A. Because the customers of Nashville Bank and Trust

Company now have available to them an actually complemented branch system; the loan limits of a much larger [fols. 3195-3198] branch; broadened services; a modern approach to banking. In addition to that, the resources which have been brought in to the Third National Bank and the additional capital have given the Third National Bank a larger capital base upon which to base loans so that they can make larger loans now.

They also acquired some $40 million in additional deposits, which in turn gave them $40 million in resource management that they can allocate to useful purposes.

* * * * * * *

[fol. 3199] Cross-examination.

By Mr. Minicus:

Q. You have testified, Mr. Robson, that you have attended a great many sessions of this trial?

A. Yes, sir.

Q. And listened to the testimony as it was developed?

A. That's right.

Q. Have you conferred with counsel concerning your own testimony?

A. No.

Q. You haven't conferred with the defendants' counsel concerning any of your testimony?

A. (No answer)

Q. Your testimony at one point had reference to certain [fol. 3200] trust accounts in the Nashville Bank and Trust Company. How many accounts were you referring to there, Mr. Robson?

A. Three of them.

Q. There were three accounts that were subject to criticism. How many accounts did the old trust company have in its trust department?

A. Several hundred.

Q. And the three that you found subject to criticism: Were they all related?

A. I think that two of them were related by reason of a related ownership of the cemetery associations.

Q. What discretionary power does a bank have with regard to the selection of investments in those trusts?

A. The burden of selecting the investments is on the cemetery associations.

Q. Did the bank have any power of the selection?

A. No.

Q. So it was not a discretionary trust—that is, with the bank?

A. That is true.

Q. Was it not the investments that were criticized by the examiner?

A. I beg your pardon?

Q. Was it not the investments and the corpus of the [fol. 3201] trust that was criticized by the examiner?

A. Yes, with the exception of the one instance of the funds from the sale of the lots hadn't been turned in.

Q. But the banks did not select those investments. The set laws of the trust selected the investments?

A. That is correct.

Q. Did the bank state to the examiner that since they had no power of selection they did not consider themselves legally liable with regard to the investments in the corpus of that trust?

A. I believe that's the position they took.

Q. You state that you found certain illegalities existing with regard to this situation. What was the illegal——

A. Nonconforming assets.

Q. Conforming to what?

A. Tennessee statute.

Q. And they were selected by the set laws of the trust rather than the bank; is that right?

A. That is correct.

Q. Did the bank take the position that it had no liability for that?

A. I believe that's the position they took.

Q. And the examiner—was he a lawyer?

A. I don't know.

Q. Are you a lawyer, Mr. Robson?

[fol. 3202] A. No, sir.

Q. Did the bank consult a lawyer on this matter?

A. As to the selection of the investments, I don't know.

Q. As to the legality of the position.

A. That I don't know.

Q. Did you read the examiner's report in its entirety?

A. Which report?

Q. The report for November 22, 1963, in Government Exhibit 22 at page A of the Trust Department Section states: "In accordance with a suggestion at that time"—this is the statement of the examiner——

A. May I have your reference again?

Q. Page A of the 1964 report, Government Exhibit 22.

A. I don't have a 1964 report.

Mr. O'Malley: Intervenor's Exhibit.

By Mr. Minicus:

Q. I am sorry, it is Intervenor's Exhibit 22. "In accordance with the——"

A. I still don't have a 1964 report.

Q. You don't have it? It is '63, sir. November 4, 1963.

A. Page A?

Q. Page A in the Trust Section.

> [fol. 3203] "In accordance with the suggestion at that time"—and that suggestion was made by the examiner, I think you recall—"the bank obtained a legal opinion on Account No. T-1492 from a highly regarded local attorney. A copy of this opinion, which expressed the view that no liability was involved for the institution, has been forwarded and is in the files of the corporation"—speaking of the FDIC.

A. I recall that letter.

Q. You didn't mention that in your direct testimony, however, when you said that the bank was liable under this?

A. I didn't say the bank was liable.

Q. You said there was some illegality involved.

A. What I said was that there were nonconforming assets.

Q. But didn't you mention the term that this was illegal?

A. I said that they were nonconforming assets.

Q. But did you say they were illegal?

A. They could be termed illegal investments.

Q. You did say that, did you not?

A. Yes.

Q. And did you say that the bank was derelict in its duties?

A. I didn't use that term.

[fol. 3204] Q. What term did you use, sir?

A. I said it was an impropriety for a trustee to stand aside and allow these nonconforming assets to be put into a trust account where the trustee knew they were violations of Tennessee law.

Q. Even when their actions were supported by an opinion from a highly regarded local attorney?

A. That's a matter of opinion.

Q. Are you an attorney, sir?

A. No, sir.

Q. They did consult an attorney, did they not?

A. They did.

Q. And the attorney who was highly regarded locally confirmed their views?

Mr. Farris: If the Court please, I want to object to this because there is no showing here that their actions were supported by the opinion of any attorney. There is an indication that an attorney gave them an opinion on this matter after it had been done.

But that doesn't mean that their actions were supported by any attorney's opinion. I think the question is improperly phrased.

Mr. Minicus: If I may quote Your Honor in answer to Mr. Farris, the examiner's statement in this report is: [fol. 3205] "While a copy of this opinion"—which expressed the view that no liability was involved to the institution—"has been forwarded and is in the Corporation's files"—supporting the view of the bank.

The Court: When was that opinion rendered?

Mr. Minicus: The opinion was gotten at the Comptroller's suggestion prior to the examination of 1963, November 1963.

Mr. O'Malley: No opinion was obtained at the Comptroller's suggestion.

Mr. Minicus: At the examiner's suggestion, the trust examiner's suggestion.

The Court: Let him answer it.

Mr. Minicus: Will you read the question to the witness?

(Reporter read the question to the witness.)

By Mr. Minicus:

Q. That is the question.

A. That there is no liability on the bank by reason of these transactions?

Q. Yes, sir.

A. I believe that's the way the opinion was written.

Q. Further on in that paragraph have you taken cog- [fol. 3206] nizance of the statement that President Hackworth expressed the intent of bringing the accounts with particular reference to Accounts T-1429 and A-1003 to a conclusion if the institution could not obtain uncontrolled authority in the acquisition of investments, as well as in the elimination of the undesirable holdings?

A. Where do you find that? On page what?

Q. That's in the same paragraph, about two-thirds of the way through the paragraph, Mr. Robson.

A. Page A?

Q. That's an A-1, toward the end of the paragraph that's continued to the next page.

A. That's correct.

Q. So then additional action, regardless of the advice of counsel, was also promised to the examiner on this occasion. Is that right?

A. That is correct. I might say that my opinion as to the acts of the bank was not based upon whether or not the bank would ever become liable by reason of any of these transactions, but that in my opinion it was improper for a trustee to stand by and acquiesce in a violation of law.

Q. Even though the bank's position was approved and confirmed by a local attorney of considerable standing?

Mr. Farris: If the Court please, we object again to these words, "approved by a local attorney." I would like to [fols. 3207-3219] read to the Court what the attorney actually said.

Mr. Minicus: He has a right to direct on this, Your Honor.

Mr. Farris: He is misrepresenting what the attorney said.

Mr. Minicus: I do not misrepresent, Mr. Harris. I have read that paragraph three times now.

The Court: What is the witness's understanding about whether this was approved by an attorney or not?

The Witness: My understanding is that the matter was submitted to an attorney after the transactions had taken place, and that the attorney gave the bank the opinion that no liability would accrue to the bank as a result of these actions having taken place.

* * * * * * *

[fol. 3220] So as of this time, there are as many branch offices available to the people of this community as there were before the merger, is that correct?

A. Well, approximately, but you have a question there of which bank are you a customer of.

Q. And if the people at the Nashville Bank and Trust Company wanted to avail themselves of the branches at Third National Bank, could they not have transferred their account to the Third National Bank?

A. They certainly could.

Q. So those offices were always available to the customers of Nashville Bank and Trust, weren't they?

A. Well, in that term, yes.

Q. Now with regard to the additional resources, up to what amount could Nashville Bank and Trust Company lend on a single loan?

A. I believe the statutes of Tennessee provide they could lend up to twenty-five per cent of their capital and surplus upon approval of the board of directors.

Q. Were you in Court when it was testified that that was [fol. 3221] in excess of a million dollars?

A. No, sir.

Q. You don't know the amount of the capital and surplus of Nashville Bank and Trust Company?

A. I could find out by looking at this report.

Q. Will you kindly?

A. At the time of the November, 1963, examination, the capital and surplus aggregated $3,300,000.

Q. Would twenty-five per cent of that be in excess of a million dollars or approximately a million dollars?

A. I don't believe it would. It's more in the range of $825,000.

Q. May I see the record that you have?

A. Capital $1,633,000; surplus $1,700,000.

Q. Do not state banks—are they not permitted to include undivided profits?

A. I don't know whether they are in Tennessee or not. Some states do permit it.

Q. You have never run across that as regional comptroller down here?

A. I don't examine state banks ordinarily, so it's not necessary for me to know that.

Q. Then you can't figure, not knowing that, you wouldn't be able to tell us just what the loan limit was?

A. I would have to specifically know what the laws of [fol. 3222] the State of Tennessee are on that point.

Q. And you don't know what the laws of Tennessee are.

A. On that point, no, sir.

Q. Now do you know whether as a combination of the two banks if a single creditor desired to borrow from both up to the limit, he would be able to obtain more than he would presently under a single loan of the Third National Bank?

A. That's true, by reason of the larger lending limit in Tennessee.

Q. Thank you.

A. If a borrower wanted to go to two or three different banks to get his loan.

Q. I said two banks though.

A. Sir?

Q. I said two banks.

A. Most borrowers like to get their money at just one bank if they could.

But if he wanted to go to two, he could get more, is that correct?

A. That's correct, yes.

Q. Now can you think of any other ways in which you claim the convenience and needs of this community were met by the merger?

A. I think it's a benefit to the community, this merger [fols. 3223-3266] resulted in a benefit to the community because the resources of the Nashville Bank and Trust Company were brought into a dynamic, aggressive bank with a highly-skilled staff who are experts in lending money and supervising credits, and also recognize the best utilization of those resources.

Q. Then you believe that if a bank is aggressive, highly-skilled personnel, it can, under the law, acquire the other banks in the community, is that your conclusion? Without limit so long as the community is benefited?

A. It can acquire——

Q. Yes.

A. Well, they can apply for it. I don't think the right to apply for a merger is limited to those characteristics.

Q. That's what you stated, that the community benefited because the Third National Bank is aggressive and had skilled personnel.

A. Yes, but your question asked whether or not a bank could acquire another bank simply because it had these qualities.

Q. And can it?

A. They can if it's applied for and approved.

Q. Approved by whom?

A. By the supervisory authority.

Q. I see.

* * * * * * *

[fol. 3267] JAMES J. SAXON, a witness called to testify by and on behalf of the Intervenor Defendant, after having first been duly sworn, was examined, and testified as follows:

Direct examination.

By Mr. O'Malley:

Q. Mr. Saxon, you are the Comptroller of the Currency of the United States, is that right?

A. That's correct.

Q. Can you recite for the Court your education and your experience in the banking industry?

A. I'm a graduate of St. John's College, Toledo, Ohio, attended Catholic University of America for several years as a graduate student of economics and finance, graduated from Georgetown Law School.

I was initially associated with the office of the Comptroller of the Currency in various capacities in 1947 for

four years, and thereafter in various financial capacities in the United States Treasury, both domestically and internationally, and also executive assistant to the Secretary of the Treasury, assistant to the General Counsel of the Treasury, served abroad with forces as financial advisor, Africa and other countries in Europe, and the Philippines, Australia, and discharging many financial functions.

Q. And subsequent, can you detail more fully, Mr. Saxon, [fol. 3268] your experience as a bank supervisor with the banking industry itself?

A. First I was employed for several years, as I pointed out, with the Office of the Comptroller of the Currency, both in the operating and insolvent divisions, a period of four years, with extensive capacities in that operation. I did substantial work in connection with banking in foreign exchange control during various parts of the war and thereafter.

I was attorney for the American Bankers Association. I was with the First National Bank of Chicago for some six years as attorney handling legal and bank operating and other problems.

Q. And when did you become Comptroller of the Currency, Mr. Saxon?

A. I was appointed by President Kennedy as Comptroller of the Currency, November, 1961, and was confirmed by the United States Senate, I believe it was in February of 1962.

* * * * * * *

[fol. 3269] Q. Mr. Saxon, what is the policy of the office of the Comptroller regarding the structuring of the national banking system?

A. In the matter of structure of the national banks, for the last nearly five years, this office has been embarked on a strong effort to improve the capacity, the competitive capacity of the national banks to fulfill the purpose of their existence, that is to serve most effectively the credit, fiduciary and other needs of the public.

By the public, I mean the corporate, noncorporate, other forms of business, agricultural community, individuals and [fols. 3270-3279] all segments of the society.

We have attempted, and I think succeeded, in infusing a

dynamism and a flexibility that we have not seen for many years in this system. We believe the public is being served better as a result of it.

We have sought to provide additionally a proper expansion of the banks as the public need required through the various techniques available to us as the prime regulatory authority of the national banking system. In using any technique which is appropriate to the circumstances, whether through affiliation, charter, merger, bank holding company or otherwise, we have sought, by all measure, to assume that banks—national banks, that is—in terms of their capacity, their capital, their strength, are able to meet the growing and increasingly heavy requirements of the business and industry in this country, the capital aggregations of which, in individual units, has grown faster than the capacity of the banks to accommodate.

We have attempted to solve, so far as we could by rule and regulation, the problem of providing major and other business interests in this country with adequate capital funds to meet their growth needs and also to provide the necessary risk capital for new and sustainingly new growth businesses.

* * * * * * *

[fol. 3280] Q. Considering all the foregoing in your position as Comptroller of the Currency, and considering for purposes of this question that you are considering only the commercial banking industry in Davidson County, what would your opinion be as to the effect of this merger upon competition?

A. I think the effect of the merger would be publicly beneficial.

Q. Do you think there would be a significant decrease in competition?

[fol. 3281] A. No, I do not think so, and on the contrary, I believe that it has been beneficial by providing an additional stimulus to this economy, and indeed to other institutions here without eliminating any substantial measure of competition.

The question is whether the absorbed institution was indeed an effective competitor. This is a question that could largely be answered in the negative.

The question also arises in terms of the public benefits of this merger, the needs of this growing city for adequate and indeed increasing capital resources. It appeared to us, as it now also appears, that the city does not yet possess an institution of sufficient size to meet even the existing capital requirements of the larger business institutions, and indeed has to rely excessively on outside institutions to provide additional need.

Moreover, I fail to see and have seen no evidence from any sources which would indicate that this merger has been harmful in any respect. One can use the broad brush sweep of a term like "public interest" without detailing what may be embraced realistically within this phrase.

Here in this case, in testing that phrase in terms of whether this merger has in any respect been harmful to the public interest is a matter of detailing and examining each specific banking operation as it affects every segment [fol. 3282] of the public, and I asked myself the question, in considering this merger whether—and since then—whether, and in what repect any member of the public has been denied credit in any substantive sense which would otherwise be available.

Has the scope and quality of credit services been increased or decreased?

Has the public or any substantial segment of it been damaged by any showing of a reduction in the scope or quality of banking services, not merely in the credit area but in the fiduciary area, in the operating area, in the bond area, and bond services, in the area of other services offered by banks?

Has the existence of that adequate facility or facilities to reach the public harmed the public through this merger or any substantial segment of it?

In examining these things by a practical test, I failed to see and would like to see if anybody can produce it, any substantial evidence of harm to any segment of the public. On the contrary, as I pointed out earlier in response to your question, I think for the reasons given it has been on the contrary publicly beneficial, and in a competitive and banking sense as well.

* * * * * * *

[fol. 3283] Q. Now the testimony in this case is that Nashville Bank and Trust Company did not compete actively for correspondent bank customers.

Considering, in addition to the facts contained in my prior lengthy question to you, that in the Nashville area, testimony and evidence in this case indicates, are located the main offices of seven savings and loan associations with [fol. 3284] total assets of more than $269,000,000 which are more than the total assets of the third largest bank in Nashville; there are located in Davidson County a substantial number of credit unions with total assets of 37.9 million dollars, which is five million dollars less than the deposits of Nashville Bank and Trust Company prior to the merger, and 2.8 million dollars less than the deposits of Nashville Bank and Trust Company as evidenced by the first call report subsequent to the announcement of the merger; there are headquartered in Nashville life insurance companies with total resources of 1.2 billion dollars which exceeds the total of all of the bank deposits in Davidson County combined; that each of the foregoing is, according to the evidence in this case, in direct competition with banks and with each other for the savings dollar; that further these same savings and loan associations have loans outstanding of more than $229,000,000 in an area up to one hundred miles beyond Davidson County; that the same insurance companies have outstanding loans in excess of $677,000,000 dollars; that the credit unions in Davidson County have outstanding loans of more than $33,000,000; that a substantial number of industrial finance company offices located in Davidson County have outstanding loans in excess of $36.9 million; that major independent financial companies in Davidson County have more than $54,000,000 in outstanding loans; and that each of the foregoing compete [fol. 3285] in one or more respects with banks in the making of loans; and further considering that two of the largest investment firms in the nation, including the second largest in the nation, are headquartered in Nashville as well as offices of other larger investment houses; and considering that subsequent to the merger, Third National Bank had 15.52 percent of the deposits enumerated previously, shares of reserves, 14.88 percent of the enumerated loans, and 14.46 percent of the total assets of the aforemen-

tioned—this figure does not include sales finance, industrial loan companies and investment house totals; and finally considering that Nashville Bank and Trust Company's premerger assets represented less than 1.7 percen of the aforementioned assets, in your opinion, did the merger of Third National Bank with Nashville Bank and Trust Company bring about the elimination of a major competitor or a significant competitor, or an effective competitor?

Mr. Minicus: Your Honor, my failure to object to that question.is not, I want the record to show, that I agree with the facts recited.

The Court: You mean you are not objecting to it?

Mr. Minicus: I am not objecting to the question. I would like the record to show that our failure to object does not indicate acceptance of the facts presented.

Mr. O'Malley: If there are any facts challenged, we [fol. 3286] will——

The Court: I don't know what that means legally. I mean Mr. Minicus' silence, he says, does not mean consent, so we will let it stand at that.

The Witness: In my opinion, Nashville Bank and Trust Company was not a major or effective competitor in Nashville.

* * * * * * *

[fol. 3287] Q. Now, will you comment upon the necessity of credit files and a credit department in a bank with $42,000,000 worth of deposits?

A. All banks that are well run and operated must have (a) a credit department, (b) competent and experienced credit officers, and (c) consistently adequate credit files to support the extension of credit at the outset, in the maintenance of it during its life and finally and most important of all, the repayment of the credit at maturity.

Q. Mr. Saxon, speaking of marginal loans, not unsound loans but the type of a loan where there might be some question as to its desirability, which bank is in a better position to meet a marginal loan requirement, a bank with a credit department and experienced and competent lending officers or a bank without them?

A. A bank with an adequate and experienced credit department, and competent credit officers who have the ca-

pacity to assess credit and the capacity of the borrower to repay it according to its terms, whether extension of credit be in the form of plain notes, that is unsecured borrowings or collateral or other secured loans, by whatever means, it is essential that those maintaining supervision of the credits of the bank have current, continuing financial data on the standing of the borrower, so that there might be provided [fol. 3288] an adequate basis for judging the repayment.

In addition to this and equally important is the availability in any institution of an enforcement and collection policy carried on by trained and competent officers who are able, on overdue or delinquent paper, developments, or whatever problems occur in credits during their life, to enforce collection.

One of the major difficulties in banks, particularly smaller banks, is this failure to provide adequate mechanism and personnel for the enforcement of loan provisions and the collection thereof on payment, or on maturity rather.

Q. Mr. Saxon, if the plaintiff in this case were to produce evidence to the effect that two or three business firms were denied loans at a larger bank in Nashville or several of them, and that they were then given loans by Nashville Bank and Trust Company, would this affect your judgment as to the competitive effect of this merger?

* * * * * * *

[fol. 3289] The Witness: The banks commonly, throughout the country, reject as indeed they must that proportion of loan applications which lack soundness either because of apparent or deemed incapacity of the borrower to repay it. Borrowers move from bank to bank, shop bank to bank to obtain credit.

The first question asked by that bank is whether or not [fol. 3290] credit has been declined at another institution. Where we find a bank, and I have never heard of a bank which has not declined credit, any bank of any size, and I would hope that we would never hear of one. If we did, we would have serious concern.

The bank's doors are open to all applicants, the problem in extension of credit is to extend sound and proper credit, not to shovel money out of the window. Where, for example, we would see a loan application rejection percentage

of less—for example—of four or five percent, we would indeed become concerned as to the lack of effective credit administration in any institution.

The common complaint one hears throughout the country is the complaint of the declined or rejected loan application. This is a natural and standard reflection of what we hope is the exercise of due prudence by the banks in lending the depositors' funds for which they have obviously a prime responsibility to manage the institution so as to be able to pay out the funds on demand.

By Mr. O'Malley:

Q. But this question I asked now, would this in your opinion, have any effect upon competition? Would the merger have any effect upon competition based upon those facts?

[fol. 3291] A. None whatsoever.

Q. Now, sir, considering the testimony in this case has indicated the Nashville Bank and Trust Company had no experienced commercial lending officers, but that the bank maintained few credit files; that the bank utilized on occasion the services of three larger correspondents in this city to obtain credit information; that the testimony of officers of Nashville Bank and Trust Company was that credit information is "kept in the officers' mind for the most part"; and further considering that in the mortgage loan department which is responsible for more than thirty-five percent of Nashville Bank and Trust Company's loans, ledgers were still kept in pen and ink; and further considering that Mr. Primm, the only person in the bank devoting one hundred percent of his time to new business development, testified that the lack of automation in the bank prevented him from obtaining large industrial accounts and properly servicing the same and this prevented the bank from growing; and considering the uncontradicted testimony that Nashville Bank and Trust Company had the opportunity to participate in loans for mortgage warehousing from one of the largest mortgage banking firms in this area, and that the bank was apparently unwilling or unable to handle such a commercial account; and further considering that the loan classifications of Nashville Bank and Trust Company in 1962 amounted to 7.4 percent of its loan portfolio, and de-

creased slightly in 1963, that its loan to asset ratio, as evi-[fol. 3292] denced by government Exhibit was approximately nine percentage points less than that of Third National Bank; and considering that Nashville Bank and Trust Company tended to specialize in direct automobile loans and that the evidence shows that on four occasions the bank advertised for such direct loans; and considering Third National Bank, though not advertising for direct loans, did in fact make twice as many direct loans at the same rate of interest as did Nashville Bank and Trust Company; and further that Nashville Bank and Trust Company specialized in mortgage loans, in this fast-growing community, based upon your answers to the prior questions and the statements contained in such questions together with the foregoing, what is your opinion of the position of Nashville Bank and Trust Company as first a commercial bank in the Nashville market, and second, as a financial institution generally in Nashville or in a regional market such as the central South.

[fol. 3293] Mr. Minicus: The same objection, Your Honor.

The Court: Overruled.

A. As to the first question, since Nashville Bank and Trust was primarily a mortgage lender, obviously it was to that extent not directly competitive with the area of commercial lending as such—that is, industrial and business lending.

What was the second one?

Q. The second: What was your opinion of the position of Nashville Bank and Trust Company as a financial institution in the Nashville area or in a regional market such as the Central South?

A. Such institution size-wise and in terms of its emphasis in the lending of its money could not conceivably have been a factor regionally.

With respect to other institutions which compete for the dollar and which engage substantially in lending such as insurance companies and savings and loan associations and other type institutions, to this extent its capacity, with the large insurance companies such as here, it would be subject to the same limitations as it would with respect to the capacity of the larger banks.

Q. Mr. Saxon, it has been testified to by a government witness that a bank which makes loans which are unsound from their banking point of view may contribute economi-
[fols. 3294-3295] cally to the community. Will you comment upon this?

A. I would not be able to understand how a bank which makes unsound loans could in any wise contribute to the community. The opposite would be the case. The ultimate course of such a bank would be receivership with dire results on the community in which the bank exists.

The bank's responsibility, I think of its directors and management, is to so manage its funds and loans as to provide for liquidity and repayment on demand depositors, whether for time or current accounts. It certainly would be contrary to any proper standard of bank management or bank regulation and supervision to sustain a position which would be based on a supposed contribution to the community of the extension of unsound loans.

That seems to make no sense.

* * * * * * *

[fol. 3296] The Court: Let the Comptroller comment on what he conceives to be the obligation of a bank in a community.

The Witness: The bank is created to serve the interests and the needs and the convenience of the needs of the pub-
[fols. 3297-3299] lic. A bank cannot legally be required to serve all of the public.

Effectively, however, this office can, through the chartering and branching policy, influence, if not force, an existing institution to extend or expand its services where it is apparent that the existing institution is not doing so. This is primarily the source of new charter applications which we receive.

While from a technical and legal sense the bank is to be differentiated from a public utility in that it is not required to extend service to all, as a matter of fact it does have an obligation to extend service to the public morally and in terms of its creation. And also as a matter of effective direction or influence on a bank, the chartering and branching policy are specifically used throughout the country to stim-

ulate adequate banking services where such services are not being adequately provided by existing institutions.

* * * * * * *

[fol. 3300] Q. Mr. Saxon, in your opinion is bank branching in a state which allows county-wide branching essential to effective competition?

A. Yes, it is. And it provides a mechanism of expanded convenient service to the public as the additional means of providing for the accumulation and specific utilization of the deposit potential in a given area.

[fol. 3301] In the case of charters, branches provide for the filling of a need as seen by us and by the initiator of such applications in those communities to serve public need and convenience.

Q. In your opinion does a bank with $42 million in deposits require branches in an area such as Davidson County to be considered an effective competitor?

A. Branching in a branching area is certainly an indispensable mechanism to provide for growth, both in terms of deposits and loan expansion, to provide competition with other existing institutions, not only commercial banking but other competing financial institutions such as insurance companies, savings and loan asociations, and otherwise. And generally to provide the basis for increased earnings growth through the apposition of deposits to making loans and extension of other services.

Without this in a branching community such an institution cannot achieve a rate of growth which would be achieved by others who are effective in a branching area.

Q. The record in this case discloses that Nashville Bank and Trust Company had a single branch in a city with a total of fifty-three banking offices. The testimony from the deposition of the president of Nashville Bank and Trust Company and from other employees and ex-employees of that institution indicates that a lack of a branch banking [fol. 3302] system was a great competitive handicap to Nashville Bank and Trust Company, and that customers of Nashville Bank and Trust Company "quit coming" because of the inconvenience of having to drive downtown in order to bank.

The record further indicates that Nashville Bank and Trust Company, with one exception, made no move toward acquiring additional branches in order to compete with the larger banks. Much of this information was given to you, I believe, in the application to merge by the Third National Bank and Nashville Bank and Trust Company, and has since been reaffirmed by direct testimony in this trial.

In view of this, what weight would your office grant this factor in assessing whether this merger was in the public interest?

A. The weight would be a judgment or reflection of the policy of the bank in seeking to compete with other banking institutions and other financial institutions in the community. This is a matter of the policy of the board of directors and the management of a bank, as to whether it wishes to compete vigorously.

It lies in its determination and the initiation of application is on their motion. Failure to do so does plainly reflect the policy of the board, the management of that bank. It is either unwilling or reluctant or otherwise indisposed to make the competitive struggle necessary to accomplish the [fol. 3303] branching.

Q. Testimony in this case indicates that Nashville Bank and Trust Company showed a profit from year to year. There is testimony that this profit was "squeezed out" of overhead. It had no funded pension plan. It had one branch. It had what has been testified to as inadequate salaries, no automation, banking quarters that were in need of renovation, no management training program, no credit files or credit department.

Considering that, since the merger, Third National Bank has completely remodeled the Nashville Bank and Trust Company's banking quarters; it has established a funded pension plan for its employees; it has raised the salaries of the officers and the employees of Nashville Bank and Trust Company by approximately $90,000 a year; it has made additional fringe benefits available to Nashville Bank and Trust Company employees; it has made available to the approximately twelve thousand customers of the Nashville Bank and Trust Company the convenience of seventeen additional modern banking offices throughout Davidson County; it has exercised its greater lending experience on the

substandard and classified loans of Nashville Bank and Trust Company and has managed to work out most of them; it has extended the services of its automated and computerized equipment and of its credit departments to Nash-
[fol. 3304] ville Bank and Trust Company customers; since the merger Third National Bank has taken trust situations which have been testified to as constituting gross improprieties in management and has replaced most of the speculative assets in said trusts with more substantial ones; it has increased the utilization of Nashville Bank and Trust Company's deposits as evidenced by the fact that immediately subsequent to the merger Third National was lending more than Third National and Nashville Bank and Trust Company combined before the merger; it has reduced the amount of Nashville Bank and Trust Company's real estate mortgage loans and has directed the bulk of these funds into commercial lending activities; its loan-deposit ratio at the present time is approximately eighteen percent higher than that of Nashville Bank and Trust Company at the time of the merger.

And considering that the merger provided Third National Bank with an immediate increase in lending limit from $2 million to $2.4 million; and further considering that Third National Bank has three hundred seventy correspondents located throughout the State of Tennessee, Northern Alabama and Southern Kentucky, and the correspondent balances amount to more than $60 million; and further, the Third National Bank during the past year participated in more than $70 million worth of loans with its correspondents;

In view of the foregoing, may we have your opinion as to
[fol. 3305] the effect of this merger on the convenience and needs of the community?

Mr. Minicus: Objection, again on the grounds that this does not present a hypothetical question, but has direct application to the facts at issue in the case, many of which are actively in issue and not accepted.

The Court: You don't insist that the fact that a particular fact is in issue or in dispute makes it improper to include that within a hypothetical question?

Mr. Minicus: No, sir, if the question is hypothetical. But this has particular application to certain banks in the city

by name. This is not a hypothetical question. This is attaching certain facts to particular institutions in this city. If it were truly hypothetical and the institutions were presented hypothetically, it might be a hypothetical question. But these are the presentation of facts in direct issue.

The Court: You mean if he said, Banks, A, B, and C——

Mr. Minicus: That would be a hypothetical question, yes, sir.

The Court: Overruled.

[fols. 3306-3312] By Mr. Saxon:

Q. The question: In view of the foregoing, may we have your opinion as to the effect of this merger on the convenience and needs of the community?

A. I think it is plain from the question and the facts cited there that the merger has been beneficial to the public in extending and expanding the services rendered in meeting the convenience and needs of the public in all of the areas served.

* * * * * * *

[fol. 3313] Q. Mr. Saxon, do you believe, in view of the questions asked and the testimony given here, do you believe that there has been a substantial lessening of competition as a result of this merger?

A. No, I do not so believe. In fact, I believe that as a result of the acquisition of the resources of the Nashville Bank and Trust, the Third National Bank has been able to expand its loans, its loan capacity obviously, and of course with respect to its specific loans not only in terms of quantity but also in terms of the amount of such loans, the acquisition of these resources also provides a substantial additional base for loan expansion and of course an additional earnings capacity, and of course finally the additional protective base or cushion to provide and support expanded risk.

Q. I believe, sir, it's your testimony that the convenience and needs of the community to be served as a result of this [fols. 3314-3315] merger clearly outweigh any anticompetitive effects that the merger might have had?

A. Yes, sir, I believe this is plainly apparent in the pres-

ently outstanding loans of the Third National Bank in its expanded trust and other services.

Of course the core of the commercial banking business is commercial lending. Other activities, while of great importance are all necessarily collateral to the essential and core function of commercial lending. This is the true test of—ultimate test of the effective capacity and competition of any commercial bank.

In this respect, it must be said that this bank has been a vigorous and dynamic servant of the public, not only to the benefit of the public, but to the benefit of the bank and its stockholders too, of course.

* * * * * * *

[fols. 3316-3320] Q. Mr. Saxon, as a bank regulatory official, solely concerned with this merger, I ask what, in your opinion, would be the effect upon the convenience and needs of the community served by Third National Bank if a divestiture was ordered in this case?

* * * * * * *

[fol. 3321] The Witness: In our opinion the merger has plainly been publicly beneficial in meeting and serving the needs and convenience of the public here; in providing for more effective financing of new and expanding businesses; providing additional effective support for a deficit capital area and a growing area.

So the divestment of the additional resources which are [fol. 3322] an important factor in enabling the merged Third National Bank to meet these needs and conveniences will be lost and a very substantial—indeed, extremely harmful—danger to the public I would see.

The Court: I think I probably misconceived your question, but I thought you were making the point that there were certain inherent difficulties in the remedy of divestiture itself which would be detrimental to the public interest, if enforced.

Mr. O'Malley: That is correct.

The Witness: I beg your pardon.

By Mr. O'Malley:

Q. That was the intent of the question, Mr. Saxon.

The Witness: Should I answer it?
The Court: Yes, for the record.

A. Procedurally I think it does present very serious problems, as I think the Lexington case which is now before the Courts indicates, in a divestiture proceeding.

Here where a bank has been acquired and substantial resources of the acquired bank have been used to absorb loss and other problems, loss aspects and other problems in the acquired bank, the difficulty of providing out of the capital resources of the additional bank if we should approve it—[fols. 3323-3334] and no national bank may decrease its capital without the approval of the Comptroller. As we are finding in Lexington procedurally, the Justice Department itself has testified through the Assistant Attorney General that this presents the most serious problems procedurally to effectuate.

We do not have in the banking industry a single instance of it yet. The Congress itself, seeing banks face this very harmful result, moved in in three cases to eliminate the necessity for divestment.

The Justice Department itself, in connection with the recent bank merger legislation that it has long sought, there sought and achieved an additional power of automatic injunction which prevents consummation of the merger, even if approved, in order to avoid what is recognized as a most difficult problem procedurally substantive of divestment.

* * * * * * *

Cross-examination.

By Mr. Minicus:

* * * * * * *

[fol. 3335] Q. Speaking of Third National Bank, you say that it is particularly active in the correspondent banking field, and now has a substantial number of correspondent banks, most of which are located within a radius of 250 miles. "Within this region it competes vigorously with the

large banks in Northeastern Georgia, Northern Alabama, Western North Carolina, Kentucky, and Tennessee, although holding only about 3.13 percent of total regional loans and deposits."

I ask you, on the basis of that statement, does it continue to be your opinion that Third National Bank is active at the correspondent banking level and that it serves several states in rivalry with numerous other large banks located in the area and throughout financial centers of the United States?

[fols. 3336-3338] A. Yes, it is my continuing opinion that it is a substantial competitive factor and a growing one in this area now having some three hundred sixty or seventy correspondent relationships.

Q. To what extent did the Nashville Bank and Trust Company engage in that market?

A. I do not—it's not my recollection that it engaged in the correspondent business. Most banks of that size would not undertake to engage in the correspondent banking business. It takes specially-trained staff, is a costly operation at times, it takes certain techniques of operation, it takes also a capacity to provide loan, trust and other services to correspondent institutions, the willingness to take overrides on loans, that is to accept the larger portion of credits originated by smaller banks, which are in excess of their lending limits, and banks of this size, if they are engaged in the correspondent business at all, and this is very rare, are engaged in it only to a very minor extent, and then I think only because of some very rare or unusual relationship.

Q. So that in this extended territory, Nashville Bank and Trust Company and Third National Bank did not compete, is that correct, sir?

A. Well, they could not have been in competition, no, sir.

* * * * * * *

[fol. 3339] Q. Well, will you explain to us then what effect upon the convenience and the needs of this large community that small accretion of the Nashville Bank and Trust Company, which was less than one-tenth of one percent, could mean?

A. I think you are right. The accretion is not substantial, certainly not substantial enough, in my opinion, to accord

the institution the litigation we are now engaged in, less I think in response to the other implication of your question.

A correspondent bank provides a very important service to correspondent institutions, its correspondent institutions, through the generation of business, of subsidiary plants or new plants that business housed, for example, in Nashville.

As I noted earlier, the acceptance of overrides on loans beyond the capacities of these banks, tho provision of advisory service of highly competent character, construction services, the whole reach of services are offered, in particular in the matter of employment, the development of the economy, in the area of a correspondent bank, the city bank correspondent which in this case would be the Third Na- [fol. 3340] tional Bank, by providing payroll deposits, plant financing, by working with headquarter offices of corporations to provide development in those areas, does have a substantial impact on the convenience and needs of the public.

Q. Yes, sir.

A. In addition, I should point out that through the use of the resources of the city bank correspondent, the smaller town area correspondent has at its disposal resources which it otherwise could not have for the benefit of that small town correspondent market or area, community.

Q. What you say is quite understandable, Mr. Saxon, but I don't quite see how the very small accretion of what you yourself designated as a very little bank, to this much larger Third National Bank, could have done for the people in this whole area.

A. We are speaking of $42,000,000 in deposits. While it is not of overriding significance, it is of substantive significance as is apparent and does provide an additional substantial base for the expansion of services to these correspondents and for the absorption of additional risk.

* * * * * * *

[fol. 3341] Q. Now, your opinion speaks also of percentage shares in Davidson County. Are you aware that the resulting bank, as your counsel informed you earlier in a hypothetical, wound up with approximately thirty-eight percent of the deposits in Davidson County?

Do you consider that an undue share of the market?

A. I think in the case of a merger such as this, the first question is the extent of the accretion itself. The secondary questions would be the total resource concentration. Here, notwithstanding this acquisition, the Third National Bank remains substantially under the First American National Bank, which is the leading bank, size-wise, in the city of Nashville.

No, I do not think in this community, where not a dispersion but reasonable concentration of banking resources is now essential to provide for a meeting of the growing needs of this community for capital, and this is still a capital deficit area, and further to reduce what is plainly now in this deficit capital area an excessive reliance on outside institutions in Chicago and New York and other areas to provide capital needs which could be provided by this city itself with this—with additional, reasonable concentration.

[fols. 3342-3352] The fact of the matter is it provides other very substantial benefits, particularly in the case of major or important corporations located here or in this area, it provides a capacity whereby a bank like the Third National may be the lead or agent bank in handling substantial credits involving a number of participating banks. This is a signally important factor in any banking market or banking area.

This accretion of resources, there's some additional concentration which is necessary here. If a group of citizens thought that there was need for another institution to replace this, I am sure that in the time that's expired, based on my experience around the country, the profit motive being what it is, legitimately in this country, properly, the source of the initiative and enterprise that we have, so fortunately again, would have submitted an application. We have seen none.

I repeat, what is needed here is some additional concentration of resources. The size of these banks, looking at it nationally as I think the banking structure must be regarded nationally, because of the mobility of capital and because of the competition for funds is not large in relation to the country's banking structure. In fact, in my opinion, it's unfortunate that it is so small.

* * * * * * *

[fol. 3353] Q. Did anyone make known to you that there was in operation at Nashville Bank and Trust Company a pension plan that people were receiving pensions under?

A. My recollection is there was a type of plan which was not a funded plan. This is, as I say, a recollection of two years ago—was not a funded plan, but provided for some limited or minor form of payment on retirement, without vesting or other provisions; so that there was no certainty of payment.

In other words, it was like a provision out of current earnings for those who were separated, but not provided with the security of vesting.

I think this is one of the great problems we have in the banking business with some forty percent of the banks in the country today. I say with a great deal of regret that I think the banking industry does not yet provide any funded or substantial pension or related benefits for this personnel.

This is still one of the present factors behind the continuing merger activity in the banking industry.

[fols. 3354-3358] Q. On the other hand, many do provide pensions, do they not, out of earnings?

A. In the small banks—rather than provide what is the proper and effective basis, through a funded plan, either a trustee or insured plan. Some of the small banks use this less expensive and of course uncertain and unreliable technique, which in the end may provide no security at all.

I am not here condemning the Nashville Bank and Trust for this because others of that, and lesser size, did so. As I stated, I think it is unfortunate that in this advanced age and state of our economy, our society, that as many as forty percent of the banks still do not provide reasonable security.

We have had to provide, Mr. Minicus, in our requirements for a merger for people who have been serving banks—top officers—for as many as thirty and forty years. We provided a minimum pension for them, who would be lost out of a merger. I don't think this is something for the banking industry to be proud of.

Q. With relation to the salary scale, what facts were made available to you to indicate that Nashville Bank and

Trust Company was below average for a state bank operating in the Nashville area—I might add, a small state bank?

* * * * * * *

[fol. 3359] Q. Let's take a truly hypothetical question, Mr. Saxon. If a bank having $400 million in resources can support twenty branches in a city of approximately 400,000 people, how many branches would you expect of a bank with less than $50 million in resources?

A. Here again, no fixed proportion of allocation has been reasonably made. This again is a matter of policy of the shareholders, directors and management of a bank. The question is one of initiative of the bank itself when presenting an application here.

We have a case that this is a matter solely of the policy of that bank apparently not to seek to expand branch-wise. It isn't a question, as I see it, of how many they could have had. It depends on where the area might have been and other competing institutions in that area.

The question is that there was apparently no interest in the creation of additional branches which would have afforded them a competitive capacity throughout the area and provided a basis for substantial growth for the acquisition of deposits and more direct access to the public.

[fols. 3360-3363] As I pointed out earlier, this is ever-increasingly the most convenient access to banking facilities.

* * * * * * *

[fol. 3364] A. You know the difficulty, we have a problem, we can face a problem where today fortunately in this country, we cannot compel people to stay in a business, even in [fols. 3365-3372] the banking business. They have the right as shareholders to get out of the business either through sale or merger or otherwise.

Difficulties that arise in this connection go back to the question of stability. The most difficult problem of all is to avoid the development of trading in banks as though they were hotdog stands. This is the most serious thing, so we —but people, through reasons satisfactory to themselves, still shareholders having the right to get out of a business as they wish, have to find another means of doing so.

The hope always is, in my capacity as a bank regulator, that the bank would fall into the best hands to assure the maintenance of high standards of banking for the benfit of the community, whether through merger, change of hands or otherwise.

* * * * * * *

[fols. 3373-3386] WILLIAM A. ROBSON, (Resumed) a witness called to testify by and in behalf of the Intervenor Defendant, having been previously sworn, resumed the stand, and testified further as follows:

Cross-examination (Continued)

* * * * * * *

[fol. 3387] Q. And the report that you received from the national bank examiner was dated May 6, 1964, and that was from Mr. Piercy, is that correct?

A. That is correct.

Q. Now what did Mr. Piercy do in order to compile that report? What procedure does he usually follow?

A. Well, we provided him with a copy of the application and his instructions were to test the accuracy of the figures and the statements in the application to form an independent judgment of his own on all of the points described in our procedures, and to give his opinion—or to give his recommendation pro or con.

Q. What investigation did he conduct outside of the four corners of the application?

A. Well, he actually came up to Nashville and conducted his——

Q. And did he interview people up here?

A. Well, I don't know specifically how many people he interviewed.

Q. Do you know whether he interviewed anybody in Nash-[fols. 3388-3391] ville?

A. He interviewed the Nashville Bank and Trust Company.

Q. Who did he interview there?

A. Well, he came into the office, main office of the Nashville Bank and Trust Company at ten o'clock in the morning for the purpose of obtaining a copy of the daily statement of the Nashville Bank and Trust Company, and at that time he stood in the lobby for about ten minutes, he tells me, clearing his throat, before an officer of the bank could get his feet off the desk and quit reading a newspaper and recognize him.

He then asked for the daily statement, and he was referred to——

* * * * * * *

[fol. 3392] Q. Now will you observe paragraph five of Mr. Piercy's report to you.

In paragraph five, Mr. Piercy reports that commercial banking is a recent development at Nashville Bank and Trust Company. Did you look into that?

A. I accepted this as being true.

Q. Did you also consider the period of time that Nashville Bank and Trust Company had actively been in commercial banking? Did you note in the application that there was a change of name and new management in 1955 and that at that point commercial management operations were stepped up quite a bit? Did you note that in the application?

A. Yes, sir.

Q. So that commercial banking, being a recent development, was in fact a recent development of only ten years duration, is that right?

A. Well, up to this year, you mean?

Q. Up until the year of the merger, from '55 to '64.

A. Well, I don't know that the Nashville Bank and Trust Company wasn't engaged in commercial banking activities to some degree prior to this.

Q. You know that, the record shows it of course. We all know that, but as an active operation, that was being aggressively pushed at the bank, it began in '55, did it not?

[fol. 3393] A. That seems to be the case, yes.

Q. And did you look into the application enough to note that during that ten-year period, the Nashville Bank and Trust Company more than doubled its size?

A. Yes.

Q. You observed that it more than doubled its size?

A. Yes.

Q. Did you observe any other bank that had more than doubled its size during that ten-year period?

A. Any other bank where?

Q. In Nashville?

A. No.

Q. And yet you persist that the management of that bank, it was the only one that had doubled its size, was not aggressive. Is that your testimony?

A. I don't know whether I used the word aggressive with respect to the Nashville Bank and Trust Company or not.

Q. How did you characterize the management of the Nashville Bank and Trust Company?

A. As being weak.

Q. And you think this weak management was the one that caused the only bank in the city to double its size, is that right?

A. Well, that doesn't tell the full story.

[fol. 3394] Q. It doesn't?

A. No.

Q. But the story is that it did double its size didn't it?

A. Indeed it did. It also doubled its loan volume and acquired a very substantial volume of classified loans during that same period, so that——

Q. Other banks—I didn't ask you that, but as long as you brought it up—Third National had quite a volume of classified loans, didn't they, and you, in your experience as an examiner, have noted other banks with quite a volume of classified loans?

A. That's true.

Q. Did you ever notice a heavy volume of charge-offs against valuation reserves at the Nashville Bank and Trust Company?

A. I beg your pardon, sir?

Q. Did you ever observe a very heavy volume of charge-offs against valuation reserves for bad loans?

A. No, but the——

Q. That's sufficient.

A. Well, that's not the whole story there either.

Q. If you want to tell some more, go ahead.

A. Well, as I testified day before yesterday, the bad debt factor which the Nashville Bank and Trust Company used [fol. 3395] indicated that sometime in its previous history, it had some very serious losses.

Q. When?

A. I don't know.

Q. You don't know, do you?

A. No.

Q. It could have been twenty years ago, couldn't it, Mr. Robson?

A. It had to be in a twenty-year——

Q. It could have been twenty years ago?

A. Yes.

Q. It could have been ten years ago?

A. It could have been five years ago.

Q. Wouldn't that have shown in the application?

A. Five years prior to——

Q. Wouldn't it have shown in these five-year reports we have here?

A. It could have been six years or seven years.

Q. But it wasn't in the last five years if it existed before?

A. It wasn't in the period these reports covered.

Q. That was a pretty sophisticated computation, wasn't it?

A. I beg your pardon?

Q. To find out that there could have been some heavy [fols. 3396-3398] loan losses?

A. There isn't any question of may have been; there was.

Q. Twenty years ago perhaps?

A. Well, whenever they occurred.

Q. Yes, but there is no indication or no proof or knowledge in you that under the Hackworth management those loan losses occurred?

A. No.

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[fols. 3399-3403] The Witness: Well, his question to me was in the 1963 report, the total of the classified loans was 145.4 per cent of the Nashville Bank and Trust Company's bad debt reserve.

• • • • • • •

[fols. 3404-3405] Redirect examination.

By Mr. O'Malley:

* * * * * * *

[fol. 3406] Q. In view of that, Mr. Robson, I ask you whether you re-affirm your statement that the bank is guilty of gross improprieties in the handling of these criticized trust accounts?

A. I see no reason to change it.

Q. Mr. Robson, Mr. Minicus questioned you upon the management of Nashville Bank and Trust and referred to [fol. 3407] that chart showing the agencies and number of years' service of the various personnel. You stated that you had no knowledge of their capabilities.

May I ask you, sir: If a man in a bank has attained the age of fifty-nine and has been working in that bank for forty-four years and another, the age ~~of~~ fifty-seven, with thirty-nine years in the same institution; and a third, fifty-seven, with thirty-nine years' service in the same institution, and have not yet after all those years and after all that service attained a position as head of a single department of the bank, would you have any opinion as to their capability to be president or senior management officer of the bank?

A. I would have a lot of misgivings about that.

Q. Thank you, sir. What misgivings, Mr. Robson?

A. I would have misgivings as to whether he had qualifications to assume greater responsibility.

* * * * * * *

[fol. 3408] Q. In addition to the material contained in the application, Mr. Robson, in analyzing the merger did you consider your experience as a national bank supervisor in having examined and having had the Third National Bank in this case under your supervision since the date of its inception in passing your recommendation on to the Comptroller?

A. Yes, of course.

Q. Were you familiar with the general reputation of

Nashville Bank and Trust Company in the financial community?

A. Only in a general way.

Q. What was the opinion of Nashville Bank and Trust Company in a general way with which you are familiar?

A. My familiarity, limited as it was, was gained from visits with bank examiners in the area, at meetings and at bankers' association conventions and personal calls of my office, in-person calls of my office. I gleaned that the general reputation of the Nashville Bank and Trust Company was that it was not aggressive and not a vital part of the community.

Q. And your testimony in calling the management weak and inept is not based upon the information you had necessarily at the time of the application, but upon your review of the Nashville Bank and Trust Company examination reports?

A. Together with all of the other supporting information.

[fols. 3409-3414] Q. What is your opinion, sir, as the bank supervisor directly responsible for the examination and the view of the examination of Third National Bank of the condition, performance, and reputation of Third National Bank?

A. The Third National Bank is an institution of highest quality in every respect. Its operations are very efficient. It has a highly efficient credit department. It has a capable and fully implemented staff of lending officers whose reputation throughout this region is well known.

* * * * * * *

[fol. 3415] TESTIMONY IN REBUTTAL

The Court: Call your first witness.

SIDNEY E. KNIGHT, a witness called by and on behalf of the plaintiff in rebuttal after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hunter:

Q. What is your address, Mr. Knight?
A. My business address or home address?
Q. Your home address, first.
A. 506 West Due West, Madison, Tennessee.
Q. And your business address?
A. 3101 Ambrose, Nashville, Tennessee.
Q. What is your occupation?
A. I am president of Middle Tennessee Foods, Inc.
Q. Are you also the owner of that corporation?
A. The sole owner, that's right.
Q. How many people do you employ, Mr. Knight?
A. Between twelve and twenty. It depends on the season.
[fol. 3416] Q. What would be about the average number of employees?
A. Around fifty.
Q. What type of business is Middle Tennessee Foods engaged in?
A. Wholesale food business.
Q. Do you specialize in any type of food products?
A. Yes.
Q. What type of products would those be?
A. Well, we specialize in imported foods and specialty foods.
Q. Who are some of your customers, what types of institutions and firms?
A. We sell all major retail groceries and institutions.
Q. By institutions, you mean what?
A. I mean schools, hotels, restaurants, country clubs.
Q. What is your approximate annual sales volume at the present time?
A. Over a million dollars.

Q. Who are your principal competitors in this business?

A. By name? Do you want me to name them? The Robert Orr Company and C. B. Ragland.

[fol. 3417] Q. Approximately how much larger than your company are the companies you have mentioned?

A. That's a hard question to answer because I don't know the volume of either company; but I would say they do fifteen to twenty times the business that we do.

Q. Is it difficult for a smaller company to compete in the wholesale food business?

A. Yes, sir.

Q. Why would this be so?

A. Capital; operating capital.

Q. Why do you need operating capital in your business?

A. Ninety percent of my sales are on credit, ranging from ten to forty days.

Q. When did you acquire ownership of Middle Tennessee Foods, Mr. Knight?

A. In May 1953.

Q. What was the approximate annual sales volume of the company at that time?

A. The first year I was in business I think I did $140,000 in sales.

Q. What was the general financial condition of the company at the time you acquired it?

A. Very poor.

Q. Shortly after you acquired the business, did you try [fol. 3418] to obtain an unsecured working capital loan?

A. Yes, sir.

Q. From what sources did you attempt to acquire this loan?

A. I tried three major banks.

Q. Which banks were they? Will you name them?

A. First American, Third National, Commerce Union.

Q. Were you successful in obtaining the loan?

A. No, sir.

Q. What reasons were given for the refusal, if you recall?

A. I hadn't established a credit rating, I would assume, for one reason. And, second, the very small business I had bought was in poor financial condition.

Q. Did you subsequently obtain such a working capital loan after you were turned down by these three banks?

A. Yes, sir.

Q. From which bank did you acquire it?

A. Nashville Bank and Trust Company.

[fol. 3419] Q. What was the amount of the loan?

A. Five thousand dollars.

Q. Was the loan repaid?

A. Yes, sir.

Q. What did this initial loan enable you to do, Mr. Knight?

A. Well, it enabled me to expand my business.

Q. Which officers from Nashville Bank and Trust Company originally solicited your account?

A. Mr. Kirby Primm and Mr. Buquo.

Q. Had you been doing business with the Hill Company when you were solicited by Mr. Primm?

A. Yes, sir.

Q. Did Mr. Primm ever threaten you with loss of business from the Hill Company if you did not do your banking at Nashville Bank and Trust Company?

A. No, sir.

Q. Did he ever indicate that you would receive preferential treatment from the Hill Company if you banked at Nashville Bank and Trust Company?

A. No, sir.

Q. After the initial loan, did you continue to borrow from Nashville Bank and Trust Company, Mr. Knight?

A. Yes, sir.

Q. For what purpose were these loans used?

[fol. 3420] A. To expand the business.

Q. What was the maximum amount of money that you borrowed from the bank before the merger with the Third National Bank?

A. $35,000.

Q. Did you like doing business with the Nashville Bank and Trust Company prior to the merger?

A. Yes, sir.

Q. Did you have any complaints on the service?

A. No, sir.

Q. What did these initial loans mean to the success of your business, Mr. Knight?

A. Well, it could have meant either success or failure.

Q. Without the loan?

A. It could have been a failure, that's right.

Q. Now after the merger with Third National Bank, did you apply for a larger loan?

A. Yes, sir.

Q. From the Third National Bank?

A. Yes, sir.

Q. Approximately what date would this have been, Mr. Knight?

A. Oh, around January or February of 1965.

Q. And what amount did you request?

[fol. 3421] A. I don't think there was any certain amount was set out, but I was looking in the neighborhood of seventy or seventy-five thousand dollars.

Q. For what purpose did you need this loan?

A. To enter a new—to add a new line to my operation.

Q. A new line of what?

A. Frozen foods.

Q. Would this have been the first time you went into the frozen food business?

A. Yes, sir.

Q. Did you receive this loan from the Third National Bank after the merger?

A. No, sir.

Q. What reasons were given for the refusal?

A. I was really advised by the officers ~~that I discussed~~ it with that I should operate on my present basis for a couple of years before I ventured out into the frozen food business.

Q. Could you afford to wait for a couple of years?

A. I couldn't.

Q. And why not?

A. The lines that I got was on a franchise basis. Somebody was going to take it, and I also couldn't expand my business the way I have without the frozen food lines to go [fol. 3422] with it. It's an essential.

Q. After you were turned down by the Third National Bank, did you then arrange a loan at another bank?

A. Yes, sir.

Q. And which bank was that?

A. First American.

Q. Is your business profitable at the present time, Mr. Knight?

A. Yes, sir.

Q. Looking back on the history of your business, Mr. Knight, do you have any opinion on whether you would have been in the position you are today without the Nashville Bank and Trust Company?

A. Would you state that question again, sir?

Q. Looking back to the history of your business, and these initial loans from the Nashville Bank and Trust Company, do you have any opinion as to whether you would have been in the position you are today had the Nashville Bank and Trust Company not existed?

A. No, sir, I don't think I would be in the position I am in today.

Q. Thank you.

Mr. Knight, have you discussed these matters with anyone other than the Department of Justice attorneys within the past several days?

[fol. 3423] A. Yes, sir.

Q. With whom did you discuss it?

A. Mr. Buquo and Mr. Thompson.

Q. Did they contact you or did you contact them?

A. They contacted me.

Q. On what day did they contact you, do you recall?

A. Either Thursday or Friday of last week.

Q. And did they contact you again this week?

A. I had an appointment to meet them this week.

Q. Did they indicate why they wanted to see you?

A. Yes, sir.

Q. And what was the reason they gave?

A. What my testimony would be, I suppose, as a witness for the government.

Q. And did they ask you to come over to the bank?

A. Yes, sir.

Q. Did you do so?

A. Yes, sir.

Q. On what day?

A. Wednesday of this week.

Q. And where did they meet with you?

A. In Mr. Thompson's office.

Q. And who was present?

A. Mr. Buquo.

Q. And anyone else?

[fol. 3424] A. No, sir.

Q. Just Mr. Buquo?

A. That's all.

Q. Mr. Thompson was not present?

A. Yes, Mr. Thompson and Mr. Buquo were both present.

Q. Did they discuss—did they ask you why the government wanted you as a witness at that time?

A. Yes, I'd have to say so.

Q. And what did you answer?

A. My answer was that the Justice Department of the government wanted to prove that without the Nashville Bank and Trust Company twelve years ago, I probably wouldn't be a success today.

Q. And that is your testimony?

A. That's right, sir.

Q. Now did they discuss at all any detailed matters of your testimony?

A. No details whatsoever.

Q. Did they discuss the loan refusal?

A. The loan was mentioned, yes, sir.

Q. Did they suggest to you that perhaps it wasn't really a refusal, that they may have just been biding their time?

A. That's right.

Q. They suggested this to you at the meeting?

[fol. 3425] A. Yes, sir.

Q. But you at the time were definite that it was a refusal at the time of——

A. As far as I was concerned, it was.

Q. Did they try to get you to change your story at all on this loan?

A. No, sir. No, sir.

Mr. Hunter: I have no further questions.

Cross-examination.

By Mr. Farris:

Q. Now, Mr. Knight, when you were planning to go meet with Mr. Thompson and with Mr. Buquo, did you advise the counsel for the Department of Justice that you were going to meet with them?

A. No, sir.

Q. Do you have any obligation or indebtdness at the present time to Nashville Bank and Trust office or to the main office of Third National or any other office of Third National that would obligate you in any way with respect to your testimony?

A. No, sir.

Q. Now when you were first contacted about testifying in this case, was it an attorney connected with the Justice Department, or did anyone else not connected with the [fol. 3426] Justice Department mention the subject to you?

A. It was an attorney with the Justice Department.

Q. Have you ever talked with Mr. Primm at First American with respect to being a witness in this case?

A. No, sir.

Mr. Minicus: Objection, Your Honor. This is completely outside of the scope of direct examination. I don't see the materiality of it.

The Court: Well, he said no, did you not?

Mr. Farris: Yes, sir.

The Witness: No, sir, to that question?

The Court: Yes.

The Witness: Right.

By Mr. Farris:

Q. Now, Mr. Knight, I believe you testified, did you not, that at one time you were turned down at First American on a five thousand dollar request for a loan, is that correct?

Mr. Weinbaum: That was Third National, I believe, Mr. Farris, not First American.

By Mr. Farris:

Q. Didn't you say you were turned down at all three banks of the bigger banks?

A. Right.

Q. So First American was one of the three bigger banks?
[fol. 3427] A. Right.

Q. And that was when? How many years ago?

A. That was in the latter part of 1953.

Q. So that was some years prior to the merger?
Now I want to ask you this, after the merger, did you

receive a loan from First American National Bank and if so, what amount?

A. After the merger of Nashville Bank and Third National Bank?

Q. Yes.

A. I received a loan for $75,000.

Q. So the same bank that had turned you down on a five thousand dollar loan before the merger, made you a $75,000 loan after the merger, is that correct?

A. Twelve years later.

Q. Yes, sir.

Now who did you do business with primarily at Nashville Bank and Trust before the merger? Was it Mr. Buquo or Mr. Primm or both?

A. Well, I did business with Mr. Buquo and Mr. Kirby Primm and with Mr. Hackworth.

Q. Now after the merger occurred, of course, did you continue to do business there for sometime before you moved to First American?

[fol. 3428] A. Well, I moved to First American in May of 1965. I think that was about twelve months after the merger had been announced.

Q. And you also were doing some business at Nashville Bank and Trust after May 19—no, I beg your pardon. That was after the merger.

Before you moved to First American, you had continued to do business at Nashville Bank and Trust for some few months, is that correct?

A. Yes, sir, right.

Q. And who waited on you when you did business there?

A. Mr. Buquo.

Q. And he's one of the same persons who had been waiting on you all of the time, is that correct?

A. For twelve years, that's right.

Q. Now, Mr. Knight, when you bought this business which you say was in poor financial condition back in 1953, did you consult with any of the Nashville banks about credit for the business before you purchased it?

A. No, sir.

Q. And I believe you say you began with just a five thousand dollar loan, that is the first?

A. First loan from Nashville Bank and Trust Company, that's right, sir.

[fol. 3429] Q. Now at the time you got this—you requested a loan at Third National Bank after the merger, how would you describe your financial condition at that time?

A. Well, when I applied for the bigger loan?

Q. Yes, sir, the bigger loan.

A. The additional loan?

Q. Yes, sir.

A. Well, I had the same security to back it up that I gave First American who made the loan.

Q. Yes, sir, but I didn't ask you that. I asked you how would you describe your financial condition at the time you asked Third National Bank for an increase?

A. Prior to the two years that I was expanding my business, I was spending more than I was making.

Q. Well, is it correct that your indebtdness at that time was more than double your net worth? Would you agree with that?

A. No, sir, I wouldn't agree to that.

Q. Do you have a public accountant who prepares your financial statements, Mr. Knight?

A. Yes, sir.

Q. Did you furnish a statement to Third National Bank in connection with your application for a loan?

A. No, sir, I don't recall that I did.

Q. Well, I'd like to hand you a statement dated April 30, [fol. 3430] 1964, and ask you if you recognize that?

A. Yes, sir, I sure do.

Q. Now do you now agree that you furnished that to Third National Bank?

A. Yes, sir.

Q. And I would like to ask you if that statement does not show that as of April 30, 1964, your business had total debts, current liabilities, of $116,000 and some odd, is that correct?

A. Whatever this statement shows is correct.

Q. Well, there's an item there called "total current liabilities." Will you read that amount?

A. $116,958.68.

Q. Now right below that it shows total capital which

includes capital, stock and surplus, or which is commonly referred to as net worth.

Mr. Minicus: Your Honor, we have been very scrupulous in protecting the bank's witnesses from disclosure. I don't want to ask that this thing be sealed, but I think some protection should be given this witness.

Mr. Farris: Well, he denied that his indebtedness was double his net worth. I had no intention to go beyond that if he had been willing to agree——

Mr. Minicus: There have been lots of reasons we would [fol. 3431] like to have all of the examiners' reports put in without blacking out either. I don't think that a witness who has been brave enough to come in on the part of the government should be necessarily pilloried for that fact.

The Court: Why don't you just file this and the Court can look at it.

Mr. Farris: Well, we will mark this——

The Court: Is the financial statement given at the time the application was made?

Mr. Farris: Yes, sir, we have another one that was in connection with it at a prior time dated July 31, 1961, and I'll furnish counsel with a copy of that one too, and we will file these as Defendant's Exhibits 55 and 56.

The Court: All right, let it be admitted and filed.

Mr. Farris: This is 55 and 56. I haven't marked them yet, because I didn't intend to introduce them. I just intended to ask him about them.

(Defendant's Exhibits No. 55 and 56 were marked for identification and received into evidence.)

By Mr. Farris:

Q. Now, Mr. Knight, I'd like to ask you this further [fol. 3432] question. If this merger should be dissolved and Nashville Bank and Trust Company was reconstituted in this market, would you go back to them to do business?

A. I wouldn't answer that question, sir.

Mr. Minicus: I object to the question anyway. I don't see that that had anything to do with the direct examination.

The Court: No, that's pretty speculative.

By Mr. Farris:

Q. Do you like it at First American where you are banking now?
A. Yes, sir.
Q. And as far as you know, do you intend to stay with First American?
A. As far as I know today, I intend to stay with them, yes.

Mr. Minicus: Objection.
Mr. Farris: That's all.
The Court: All right, is that all now of this witness?
Mr. Hunter: Just a moment.

[fol. 3433] Redirect examination.

By Mr. Hunter:

Q. Has your business prospered in the past several years or the last year or two, Mr. Knight, more so than before?
A. Yes, sir, it sure has.
Q. This period from 1961 to 1963—what did that represent in your business as far as your business was concerned? Was it a special period in your business?
A. A special period in that length of time; we entered a new field in the wholesale food business.
Q. Would you normally expect your profits to be less?
A. No, sir, you are lucky to break even, or lose money in the field that we entered in 1960.

Mr. Hunter: Thank you.
Mr. Farris: Just one more.

Recross-examination.

By Mr. Farris:

Q. Mr. Knight, did the net worth of your business increase between 1961 or 1964, or did it decrease?
A. It decreased.

Mr. Farris: Thank you.
The Court: All right, step down.

* * * * * * *

[fol. 3434] Oliver Hubert Dale, was called as a witness by and on behalf of the plaintiff in rebuttal, and, having first been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hunter:

Q. What is your present address, Mr. Dale?
A. My business address is 3121 Dickerson Road.
Q. And your home address?
A. 4040 Matilda Street, Nashville.
Q. What is your occupation?
A. Well, I am in the general insurance business and real estate, and primarily in real estate I am in the development field.
Q. What is the name of your agency?
A. I operate as the Dale Agency.
Q. Mr. Dale, would you trace your educational and business background from the time you entered college?
A. Well, I had college prior to the war, and spent a little [fol. 3435] time in the Navy, and came back and finished up in about 1947.
Q. What college was that?
A. That was the University of Tennessee, Knoxville. I went with International Harvester Company at that time and remained with them for four years, until August of 1951. I decided I would rather get in some type of business for myself rather than be working for a corporation or someone else.

I left them and entered the life insurance business, Massachusetts Mutual here locally, and shortly afterwards I felt that I would rather get into the general business. So I started in the fire and casualty writing and continued that for about two years.

Then the two conflicted. I was still with the Massachusetts Mutual office and it was necessary for me to get out and open an office of my own, and I did so in about February of 1954.

Then in opening that office, I had some extra space there. I was contacted by a local real estate man who wanted to sort of come in and share the office with me. He wasn't a

well-educated man. He was some twenty years older than myself.

Shortly after he entered there he felt like he needed some help on a lot of the details, on closing deals and so forth. [fol. 3436] And he proposed that we set up a partnership in the real estate business, which we did. Then we continued on that way for, I would say, a year or so; and there came an opportunity to develop a little tract of land that amounted to about nine lots.

Q. What year was this, sir?

A. That was probably about 1955, late '55 and '56. We organized what we called the Dale Construction Company. It was a corporation, and we developed those nine lots. We not only developed them; we built on them, and occasionally we would take trades and second notes and set them up as such.

Then along about 1958, after we had been there about four years, he decided he would rather sort of slow down and wanted to retire. We dissolved our partnership and more or less put the construction company in reserve. We just let it run along without doing any more business in it.

We bought several notes and assets of first one kind and another. It wasn't easy for us to cash out. Second notes don't have a ready market. They still needed management, and I continue to manage them.

Q. When did you go out on your own?

A. That was 1958. I continued in the early part of 1958 then—I bought a little tract of land and divided that up and built about five houses on it and sold the other half, which turned out right well.

[fol. 3437] In the latter part of 1958 an opportunity became available to me to start a right sizeable development. It would consist of around 150 acres. It depended on me buying something like fifty-four acres from one man and five acres from another. That type of development would require a considerable amount of money if I tried to do it all in one jump.

I sliced off an area there where I could propose about seventeen lots. I had enough money to get my initial work done there and have the lots ready for the market, and I could even make the bond that I needed for the roads. The roads would not be completed; I would bond my roads.

But I needed about ten thousand dollars to proceed with that.

Q. At which bank were you doing business?

A. I was banking primarily with First American at that time.

Q. What was the maximum amount you had borrowed from First American?

A. I had probably never borrowed more than about $4500 from them up to that time.

Q. You say you needed ten thousand dollars to begin this new development?

A. I needed ten thousand dollars.

Q. Did you apply for the loan from First American?

[fol. 3438] A. I did. I applied and I felt that it should be made. I felt I had enough assets and I could give them enough security, which in applying for all my loans, even today, I don't reckon I have ever made a loan that I didn't supply life insurance. I don't mean cash values, but I mean life insurance that if something happened to me their problems would be over.

It would be up to my estate to work out the details. They would get their money.

Q. Did you receive the loan from First American?

A. No, sir, I did not.

Q. What reasons were given for the refusal?

A. Well, I had been doing business with Mr. W. G. Gambill there. About that time he was moved to a different office. A youngster named Scott Hildebrand—both of them real fine fellows—took over Mr. Gambill's spot. I reckon I had been doing business with Scott about six months; he had been the man I had done business with.

I went to him and presented my case. I know he was a little bit reluctant to commit himself on that, and he wanted to talk to Mr. Gambill. Later they called me back and talked to me about it again.

Then within a period of about ten days they called me in and said, well, they couldn't make it. So I asked them, I said, "Scott, just how much money could you all loan [fol. 3439] me." He said, "Well, I was afraid you were going to ask that question." He says, "I don't know how much money we could loan you. But, really, Oliver, it is not that your credit is bad or that you don't have pretty

fair assets; but we don't know whether you can handle this venture or not.

"If we loaned you ten thousand dollars, you are going to move into this bigger venture and," he says, "you may need thirty or thirty-five thousand dollars; and we don't know whether we would want to go along with that or not."

Q. After you were turned down by First American, were you able to obtain the ten thousand dollar loan at another bank?

A. I was.

Q. What bank was that?

A. That was the Nashville Bank and Trust Company.

Q. What did this initial loan enable you to do?

A. Well, it enabled me to make my first venture into that development and get these seventeen lots on the market.

Q. Where is that development located?

A. It is just north of Old Hickory Boulevard and about a quarter of a mile off of Dickerson Road, west of Dickerson Road. Its name is the Dalemere Subdivision.

Q. Would it be a fair statement, Mr. Dale, that the [fol. 3440] Nashville Bank and Trust Company was willing to take a chance that you would be successful, when a larger bank was not?

A. I think they definitely were, yes, sir.

Q. Would it also be a fair statement that you needed a bank like Nashville Bank and Trust Company when you started in business for yourself?

A. It seems that I did, yes, sir.

Mr. Farris: If the Court please, I just want to let the record show he is leading the witness. I am not objecting to it.

By Mr. Hunter:

Q. How was your initial loan handled at the Trust Company?

A. When I went down with my proposal and financial statement I talked to Mr. Primm, who was a personal friend of mine. He said, well, he was in the field of securing new business and he didn't make loans; but I was already acquainted, had already become acquainted, with Mr. Buquo.

So he called Mr. Buquo over. We went over the program. Mr. Buquo said well, he didn't see why it couldn't be made; that he would like to talk to Mr. Hackworth about it before saying they would do it.

So one of them called over to see if Mr. Hackworth was available. We went in Mr. Hackworth's office and sort of [fol. 3441] laid my program out before him, and, Mr. Hackworth said he thought that "We definitely ought to make it." He said, "Well, we will just take care of it." So from that time on, really I don't reckon I ever went back to Mr. Hackworth about anything.

On one occasion I may have gone back to more or less explain to Mr. Hackworth what we were doing, so that in the committee meetings or whatever type meeting they had to approve these loans Mr. Hackworth would be familiar with the facts of the situation rather than being sort of out in the cold.

That was really why we wanted to ask Mr. Hackworth about making it. Mr. Buquo had already agreed to make the loan, but he did want Mr. Hackworth to know the facts as I would tell them, rather than him trying to relate them.

Q. Was the initial loan repaid?

A. Yes, sir, it was.

Q. Did you continue to borrow money from the Nashville Bank and Trust Company?

A. Yes, sir, several times. I had several loans and paid several of them—up to as high as possible around $35,000.

Q. For what purposes were these later loans used?

A. This subdivision is now in the sixth section. Some [fol. 3442] of the sections had as many as around forty-five lots in them. So, as I got into a bigger lump, of course it needed a little bigger amount of money. Even though I was accumulating a little more of my own, still I needed a sizeable amount of money to lay out lots, water mains, and the paving of roads for some forty-five lots.

Q. Are you developing any other tracts at the present time?

A. Well, I have got two commercial tracts that I am working on. One of them is a partnership venture with a pharmacist out in my end of town. That's where my office is now located. It is 249 feet facing Dickerson Road.

Then I have acquired some property on north of Dick-

erson Road that has, I feel, definite commercial potential. To Nashvillians it would be probably known as High Locust Inn, and the property immediately behind that. It is now prepared and ready for record at the Planning Commission here in Nashville.

Q. Did you also maintain a deposit account at Nashville Bank and Trust Company?

A. I maintained two or three accounts, a savings account and my business account. And then I maintained what money we had in this Dale Construction Company there; it remained there.

I would say my cash at Nashville Bank and Trust Com- [fol. 3443] pany fluctuated. In my business you usually keep your money at work to a big degree. But sometimes when you would sell three or four lots, it would get up as high as twelve to fifteen thousand dollars temporarily or momentarily, because generally I had something else to start doing with it within a month to six weeks.

Q. How would you characterize the service you received on your accounts at the Trust Company?

A. It was very satisfactory. I was very happy with the service I got there. I reckon a lot of times I explained in my office that I am sort of a country boy, and I operate a country office. They operated a bank that might be characterized as friendly or dealing in a smaller ratio or a smaller area where you become a little better acquainted with those whom you did business with—both the officers and the tellers and the boys in the note window.

You become a little better acquainted or felt like you were a personal acquaintance or a personal friend with all of them.

Q. With which officers were you most acquainted?

A. Well, I would say Mr. Buquo, of course, and Mr. Primm; Mr. Albert Thomas. I got well acquainted with Mr. Overton Thompson really through other channels. He had a piece of property that one of the local civic organizations had that I bought from him and managed to sell [fol. 3444] and develop a little bit on around Hunter's Lane.

I knew them all, actually—Mr. Aldred; I knew Mr. Noel. And sometime or another in the course of my visits from somewhere back around 1956 on up I was personally ac-

quainted with all of them. Any of them that I would meet in the lobby I spoke with and visited with.

Actually I guess I enjoyed my banking.

Q. What opinion did you have of the general level of competence of these people?

A. Of these officers?

Q. Yes.

A. Very good. Of course actually, two of the younger officers—Mr. Jerry Yokley—he more or less handled the notes or any renewals. I always made them with him. They had another young man there named John Hardcastle, who was a very competent fellow. John handled the records upstairs more than anywhere else, but I had had occasion to meet him.

A time or two, when I think it was actually more an error on my part than anybody else's, I called John to sort of clarify our discrepancies; and within a very few minutes he could either give me the information I needed or explain the situation to my satisfaction. He always seemed to be very competent.

Mr. Buquo seemed to understand the banking business [fol. 3445] to a very high degree. I thought Mr. Thompson was a very, very capable man. Mr. Alldred, who was more or less in the financing automobile loan department, sort of headed that and was very capable. He wasn't what I consider a real personable man. He wasn't as friendly as some of the rest of them.

It may have been he was always busy or had more work to do, I don't know. Mr. Noel was a fine fellow, but he was the type of fellow who wouldn't take any authority. In other words, if you went in there and had pure evidence that you didn't need the money, he would make you a loan. But if you had to use any imagination on his part, he wouldn't be a very good man to do business with.

But, generally speaking, they were very good. Mr. Thomas in the mortgage loan department was very well versed in his field. The times I was dealing with him, I don't think there was anybody else in Nashville more capable of handling that type of business than Mr. Albert Thomas.

Q. Mr. Dale, do you have an opinion based on your

experience as to the effect of this merger on the small business borrower such as yourself?

A. I do. I think the more outlets you have, the more opportunities to seek or search for a loan, the better opportunities you have got. It would be sort of like hunting in a field where there was plenty of rabbits, and [fol. 3446] hunting in a field where there is not but one or two. You have to be mighty lucky if you come up with the right answer from the small man's standpoint.

Then, secondly, I feel, and as I have observed the situation, largeness of necessity eliminates the interest in the small man. Of course at the time I was trying to seek this loan that we started out talking about, I was a very small businessman.

It seems to me that in my seeking this loan at First American National Bank that I hadn't ever acquired acquaintance with men in position to really carry my story to the loan committee. These men wanted to be sure they didn't do anything to jeopardize their own climb up the ladder or their own positions with the bank.

If there was any doubt in their mind, rather than trying to verify it or clarify it, the easiest thing to do was say, "Well, I don't know whether Oliver is quite capable of that big venture or not," and let the committee use that as they will.

Generally speaking, I think the committee used that as saying, "I don't think this boy is capable of doing that, so let's turn this loan down." I really think that that's what happened, rather than evaluating it in its fullness.

Q. You found things different at the Nashville Bank and [fol. 3447] Trust Company.

A. At the Nashville Bank and Trust Company they took the entire picture into account; and I think, when they did, they felt like they were making a justifiable loan and one that they might reasonably expect to receive their capital back, with interest.

I think another thing that largeness will do here in Nashville, there tends to be a concentration of people that would be in the banking field in certain areas of the county. I don't think I will make any insinuation that most people wouldn't agree with to say it is really across town from me.

A young man out in my end of town trying to get his

own feet under and trying to establish his credit and get his business going is not really in a position to be acquainted with bankers in the top echelon. He is going to have to go to somebody to sponsor someone. In other words, he is going to have to acquire obligations that a young man who is willing to fight his own battles shouldn't have to assume.

He shouldn't have to be obligated to the man who is successful next door that maybe he is in competition with and have to use him more or less as a crutch to get your financing. Then if something comes along where you might want to step on his toes a little bit in competition, you are [fol. 3448] not free to do it. You are not free to do it; you are obligated.

Actually your financing should be a thing where you can handle it directly between you and your banker.

Q. Mr. Dale, did you discuss these matters with anyone other than a representative of the Department of Justice within the past several days?

A. Yes, sir, I did.

Q. With whom did you discuss it?

A. I was called at my office on Tuesday by Mr. Hubert Buquo, and he said he saw I was going to appear as a witness and he would like to discuss the matter with me. He reminded me that he had always been helpful and he had always met my needs and tried to take care of me, which I agreed that he had.

I hesitated actually—mainly, I was quite busy. I didn't feel like I had time to go up there. He said, "I just felt like you would be in town and would ask you if you wanted to stop by and let us go over what you were going to say."

Wednesday morning I called him back and told him I would be up there and told him I would come by. He assured me, however, there was nothing irregular about it. I assumed he knew what he was talking about.

To tell the truth, I couldn't see any harm in me telling [fol. 3449] him what I was going to say. You already knew. I knew that they weren't going to change my testimony, because it wasn't something right on the surface. It wasn't that type of testimony. In other words, it was facts and a deep conviction that I had to testify from—not something that was superficial enough that I could change it.

Q. You did meet with them, though?

A. I did meet with them, yes, sir. I don't know just how long. I would say twenty minutes. We visited in Mr. Overton Thompson's office. They said, well, the main reason they wanted to discuss it with me was they felt like they had always been fair with me. They had, so we didn't have any problem there.

They just wondered what type of testimony I would be giving, and they wanted to explain to me that their working conditions were pleasant and they were happy there with their position under the merger; and that, so far as they were concerned, they would just as soon it would stay like it was and that to see the merger turn back, they feared that it would be hard to reconstitute the old Nashville Bank and Trust Company as I once knew it.

Q. Mr. Thompson and Mr. Buquo are both fairly good friends of yours?

A. Yes, sir, they are.

Mr. Hunter: Thank you.

[fol. 3450] Cross-examination.

By Mr. Farris:

Q. Mr. Dale, did Mr. Thompson or Mr. Buquo in any way persuade you to change your testimony?

A. No, sir, they didn't. I wouldn't say that they even tried. I didn't know what they wanted to talk to me about. The statement I made was more or less what they said to me.

They just wanted me to know that they felt they were under good working conditions, and that actually the facilities of their branch were still open to me; that I would still get the same friendly treatment they had always given me.

Q. I believe you said that you first started doing business over there because Mr. Kirby Primm was a close personal friend of yours and he solicited the business.

A. Yes, sir.

Q. Is that the reason you moved to First American?

A. That would be the main reason, yes, sir.

Q. Is that the reason you would be likely to stay at First American as long as he is there?

A. I would say I would be likely to stay up there, yes, sir. On the other hand, if he were to move back to Nashville Bank and Trust, I might go back down there with him. [fol. 3451] If he moved over to Third, I might be over at your bank.

Q. In other words, you like to do business with a bank he happens to be with at any particular time? Is that right?

A. He is a good friend. In other words, I think if I needed some special assistance, I think I could get it from Mr. Primm. I think I could get my full story to the loan committee through Mr. Primm.

Q. Back when First American discouraged you in your request for more credit, I believe you said you first got a ten thousand dollar loan from the Nashville Bank?

A. Yes, sir, that's right.

Q. Did you offer that loan to any other bank in town besides First American?

A. No, sir. I went to First American and Nashville Bank and Trust, and I secured the loan.

Q. You didn't offer it to Third National?

A. No, sir. If I had been turned down at Nashville Bank and Trust I would have.

Q. Have you offered any other loans to Third National?

A. Yes, sir, I have.

Q. Have they made them?

A. Yes, sir.

Q. As a matter of fact, they have made quite a number [fol. 3452] of loans to you; isn't that right?

A. Yes, sir.

Q. Do you feel like you have been treated all right there?

A. I don't have any complaint whatsoever with the treatment I have received from Third National. It has always been nice. In fact, prior to—when I was with International Harvester I did my banking with Third National.

When I left and went with Massachusetts Mutual, the elderly Mr. P. D. Houston was a director of the Massachusetts Mutual Life Insurance Company, which they considered quite a prizeable thing, to have one of the leading directors here in Nashville; and up there they encouraged me to move my account from Third National over to First

American. In other words, I never really had any real reason or any animosity with any of the banks that I have done business with.

[fols. 3453-3467] Q. Now you mentioned you liked Mr. John Hardcastle. Where is he now?

A. He's out on Dickerson Road at the Third National Branch office.

Q. And do you do business with him out there?

A. Yes, sir, I do.

Q. And is he giving you as good service now as he did when he was down at the main office of the Trust Company?

A. I think John is a very, very capable man; he's given me good service, yes, sir.

Q. Do you like to go to that branch out there?

A. Well, that branch serves our community to a degree that nobody else does, because you are right there ~~at~~ us. Now prior to that branch coming on Dickerson Road, branch banking in my area of town was almost worthless, because we could get from four miles out Dickerson Road uptown easier than we could get to any of the other branches that are available.

Of course your bank will be available and it will be convenient, yes, sir. It is convenient now, and it will be even more convenient, because I'm at 3121, and it's being moved in the same block.

Mr. Farris: Yes, sir. I believe that's all. Is that all?

Mr. O'Malley: I have nothing further.

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[fol. 3468] WILLIAM L. SHEETS, a witness called by and on behalf of the plaintiff in rebuttal; after being first duly sworn, was examined and testified as follows:

[fol. 3469] Direct examination.

By Mr. McKenna:

Q. What is your address, Mr. Sheets?
A. Route 1, Mount Juliet, Tennessee.
Q. What is your occupation?
A. I am unemployed at the present time; retired from the FBI.
Q. When did you retire?
A. April 8 of this year.
Q. How long had you been employed by the FBI?
A. Over thirty years.
Q. Were you employed by the FBI during the month of July 1965?
A. Yes, sir.
Q. And during that period did you conduct an investigation into automobile financing in Nashville, Tennessee, for the Department of Justice?
A. Yes, sir.
Q. Would you describe the extent of that investigation?
A. We contacted seventeen automobile dealers in Davidson County, most of whom were in Nashville, concerning the different methods of automobile financing by the various banks and other lending institutions in the city.
Q. What kinds and types of financing did you find in [fol. 3470] use during that period?
A. In some instances I found that direct financing was utilized and that the customer would make his own arrangements with the bank, so in a sense he would pay cash to the dealer for the automobile.
In other instances, the customer would merely ask the dealer to handle the financing in any manner he desired.
Q. In those instances where the customers asked the dealer to finance the purchase, what happened? Could you trace that a step or two? What happened to the dealer paper?
A. Well, in some instances a particular dealer would have an arrangement with a particular bank and would

lean toward that bank in letting that bank finance that particular paper. It might be because that particular bank had floor-planned his automobiles.

It might be because of a personal friendship existing between the dealer and some member of the bank. It might be the particular dealer had an arrangement with that bank, where in certain instances the bank would credit him with what I believe they call a reserve.

That is, the dealer might get credited for, say, one percent of the interest rate on a transaction. In other words, the banks were active in contacting automobile dealers, soliciting financing business, with the exception of Nash- [fol. 3471] ville Bank and Trust.

Q. The banks in Davidson County, then that solicited the dealers: Which banks did the majority of the solicitation?

A. I don't know, Mr. McKenna. I know that some dealers said, for example, that Commerce Union was most active. Others leaned toward First American; and others, Third National.

Q. Were you able to determine whether any banks outside of Davidson County solicited or financed automobile loans through the dealers?

A. I found no evidence of such.

Q. Were you able to determine whether any banks in Davidson County advertised in newspapers fixed rates of interest?

A. Only the Nashville Bank and Trust Company.

Q. Do you recall what those rates of interest were?

A. Five percent for new cars, and six percent for used cars.

Q. Generally where the dealer financed the car, were the interest rates higher than this five percent on new and six percent on used?

A. Generally I would say yes; not in all instances, but in some instances if the dealer financed it, the customer would probably pay a little more interest than he would if [fols. 3472-3473] he had arranged his own financing with the bank.

Q. And generally where the dealer paper was purchased by the bank at the request of the dealer, did the dealer

receive the overage between the interest rate charged by the bank and the interest rate on the note?

A. I would say generally that would occur, but not in every instance.

* * * * * * *

Cross-examination.

By Mr. Farris:

* * * * * * *

[fols. 3474-3479] Do you know what the interest rates are on direct automobile loans at other banks?

A. I was told by many dealers that anyone with good credit—at least as of that time—could get a five percent rate without any difficulty.

Q. And that would be at other banks in Nashville?

A. Right, at any bank.

* * * * * * *

[fol. 3480] THOMAS J. McNICHOLS, a witness called to testify in rebuttal by and in behalf of the Plaintiff, after having first been duly sworn, was examined, and testified as follows:

Direct examination.

By Mr. Weinbaum:

Q. Professor, would you please state your address and occupation?

A. My residence is 2208 Crestview Lane, Wilmette, Illinois; my place of occupation is the Graduate School of Business, Northwestern University.

Q. And do you occupy any administrative position at the university?

A. Yes, I'm professor of business administration and chairman of the Department of Business Administration of the Graduate School of Business.

Q. Would you please trace your educational background from the time you entered college?

A. Yes. I received a degree at Texas Christian University after the war in 1947 in accounting and economics, [fol. 3481] and I received a master's degree, Master of Business Administration in finance and accounting, 1948. I received a doctor of philosophy degree in finance and banking, 1952, from Northwestern University.

Q. Can you outline for us your teaching experience subsequent to the obtaining of your doctorate degree?

A. Yes, I have had teaching experience in accounting, in finance, banking, public finance. I have had teaching in the general management courses with a specialty in business policy in recent years.

Q. And what is the subject of business policy?

A. Well, business policy is a course that was instituted in graduate schools of business in such schools as Harvard University and Northwestern University which is an integrating course that takes in all of the functions of business such as the production, marketing, finance, personnel, human behavioral sciences, and attempts to look at the business venture from the chief executive viewpoint in order to bring together the various disciplines of the business school.

Q. Are you involved in any other professional pursuits in addition to your teaching duties and responsibilities as the department chairman?

A. Yes, I am. I have served as a consultant for various industrial firms and associations for a number of years.

Q. Can you detail some of the consulting work you have [fol. 3482] done?

A. Yes, I have been a consultant for Standard Oil of New Jersey, mainly Creole Petroleum, their largest subsidiary. I spent one year leave of absence with them doing management development and some consulting work, and I've made about eight trips to Venezuela since 1957.

I've been a consultant for Western Electric for a period of years, mainly in management development work, and conducting some of their management development programs both in New York and in the Chicago area.

I have been a consultant to Armstrong Cork in Lancaster, Pennsylvania, for about eight or nine years. I have

been a general consultant, but mainly in the field of management development.

I have worked with Kimberly-Clark, a number of smaller and medium-sized firms. I have also done some consulting work with the Ford Foundation.

I was a member of the group from Harvard and the University of Chicago that initiated the first management development program in the Middle East in 1960. I returned in 1961, and I was there last year consulting with the National Management Institute of the Egyptian government on management development.

I have also been very active for ten years or more in our own high-level institute of management program con- [fols. 3483-3490] ducted at Northwestern University. I started the Institute for International Management in Lucerne, Switzerland, last year, and I will be back again this fall to conduct the program.

I have had also some minor consultations in Europe with such firms as SAS and a few others.

Q. And is this consulting activity that you have done in the nature of management consulting work?

A. Yes.

Q. Can you briefly state the publications which you have been responsible for?

A. Yes, I have had a number of publications. A major book with McGraw-Hill, which is now in its third revision is entitled "Policy Making and Executive Action" which is one of the widely-used books, if not the most widely-used book in the policy teaching field in the business schools today.

I have published with the Committee for Economic Development, "Business Profits—Fact or Fable," "The Metropolitan Growth Patterns in the Chicago Area." I have had a number of articles in various journals such as the "Accounting Review," "Commercial and Financial Chronical," "Barron's", and a few other minor journals.

I have another book, "Executive Finance" with Virgil Boyd, which will be out this spring, and I have a few other miscellaneous things that I can't recall.

* * * * * * *

[fol. 3491] Q. You have indicated that you have inven- [fol. 3492] toried management. Can you cite a few such assignments?

A. Yes. I did this with Armstrong Cork in connection with the selection of candidates for the upper middle management program which I designed for the company. I have done it most recently with a small corporation in Chicago, and with a thirty-million-dollar firm in Pittsburgh.

Q. Looking at Defendants' Exhibit 15 and considering first the board of directors of Nashville Bank and Trust Company, we would like to ask you, Professor, what the usual situation is when a new ownership assumes control of a corporation or a bank, as Mr. Weaver and his associates did on January 15, 1964.

A. Usually if a new management group comes in, particularly a group that is taking control of the stock ownership of the organizations, they would undoubtedly change the board of directors and put in at least a substantial number of their own directors.

Mr. Farris: If the Court please, on behalf of the banks, I would like to note an exception to this as irrelevant, because the defendant banks have no responsibility for furnishing directors to an organization.

What Mr. Weaver and his associates did or may have done is irrelevant to what the banks may have done or should have done. If he failed to do certain things that are [fol. 3493] inferred here, it is not the responsibility of the banks in any way. We don't see that this testimony is relevant or competent.

Mr. Weinbaum: Your Honor, we believe that what Mr. Weaver may or may not have done is pertinent to this lawsuit, however. During the time that Mr. Weaver owned the bank, we believe that there were certain alternatives which could have been pursued and we believe that Professor McNichols is competent to testify on these points.

The Court: On what point is this relevant? What does it prove?

Mr. Weinbaum: We would like to demonstrate, Your Honor, through this witness in this line of questioning, the board of directors and the fact that some of these men were elderly or subsequently retired or died was not a major problem to this institution.

The defendants have cited this as a reason for this merger, one of the reasons for this merger.

This to the defendants' point of view was a flaw in the Trust Company, and we would like to show that it was not, in fact, such a problem.

The Court: It is not a major problem?

Mr. Weinbaum: That is correct.

[fol. 3494] The Court: I think it is competent on that point.

Mr. Weinbaum: Thank you.

By Mr. Weinbaum:

Q. Professor, what significance do you attach to the fact that the board as constituted on January 15 of 1964 was generally advanced in age; that two months later at least two directors resigned, followed by a third resignation; and that subsequently some deaths occurred among members of the board of directors?

A. Looking at the age of the board of directors, I could readily understand how some of them became incapacitated and some would pass away. Also, since you had a change in management and a transfer of the majority ownership, it is only logical that some of these directors would bow out of the picture voluntarily. They would not have a distinct interest.

Q. If the new ownership chose not to take an active part in the management—that is, for instance, serving as members of the board of directors—what would your judgment be as to the likelihood that this new ownership would elect its own choices as directors?

A. I definitely think that they would have a tendency to elect their own directors because, if they are going to be absentee ownership, they certainly would want to have [fol. 3495] their own representatives on the board.

Q. Might these selections have been made as the foregoing resignations or deaths occurred?

A. Yes. You would normally expect that the directors who had retired or passed away would be replaced, and you would normally expect that they would be replaced with people chosen by the new owning group.

Q. Have you met any of the officers or other personnel of the Nashville Bank and Trust Company?

A. No, I have not.

Q. Is it possible to make references about the competence and depth of management of a bank from an examination of data on education, experience, and age?

A. Yes, I definitely believe that it is.

[fol. 3496] Q. Can you state whether or not higher levels of education and experience would suggest higher competence?

A. Yes, normally these are the particular kinds of data that you look for when you are trying to judge or inventory a management group, the education, formal education coupled with the experience are very good indicators.

Q. Would varying age distribution suggest provision for adequate succession?

A. Yes, on the face of it, it would. It would indicate that you have people coming along to take the place of those who are advancing in years.

Q. Sir, would you please look at the banking department of Nashville Bank and Trust Company as set out in Government Exhibit 645, and indicate whether or not in your judgment there is a proper balance or distribution of personnel, age-wise?

A. Yes, age-wise, I would say there is a proper balance and distribution. We have a range from twenty-five to the department head who is sixty-five years of age, and very good distribution in between.

Q. In terms of length of service of officers of the banking department, what do the figures on this exhibit indicate to you?

A. Well, overall, they indicate a great amount of experience, and you have a range of five years to the head of [fol. 3497] the department, was forty-four years, and two assistant vice-presidents who have thirty-three years and seventeen years respectively.

Q. In terms of education, what do the figures for the members of the banking department indicate to you?

A. Well, outside of the department head who has fourteen years of education listed here, all of the others except one of the younger men, apparently was brought in perhaps to be brought along, the others only have twelve years of education.

Q. And when you put those years of education for the

men who have had no college education against length of service, what inference do you draw from the combination of those two statistics?

A. Well, I would say that this banking department, from the indication of the data that are before me, is a well-rounded department with a great deal of experience.

If you look at their education and then couple it with the experience, it ought to indicate competence. If you are talking about a banking department, this requires technical competence, and it certainly can be acquired within the bank and we look down this list here, we find forty-four years, thirty-three years, and seventeen years of experience.

Q. As a management consultant, considering the size of this bank, would you have any criticism at all of the officer [fol. 3498] personnel inventory of its banking department?

A. No. The only exception we might have is relative to education, but I think this is adequately compensated for by the experience. We have to look back to the number of college graduates you would have been able to employ forty-four years ago in a bank and the new—and of the three newest employees, one of them does have a college education.

I would say that this banking department, for a bank in the twenty-five to fifty million class, was certainly adequate, could compare very favorably with other banks throughout the country.

Q. Professor, witnesses for the defendants have testified, based on these very same statistics absent the years of education statistical presentation, that the retirement of the head of the banking department created a vacancy that a new man would have to be found to replace him, and that finding him would be most difficult.

Where do most companies get their replacements when a vacancy occurs?

A. Well, most companies, practically all, would first look inside the organization for a replacement.

Q. And would you state whether or not it appears that management succession from within the bank was provided for at Nashville Bank and Trust Company in the banking department?

[fol. 3499] A. Well, it looks to me it has been, because we have the department head of sixty-five years of age, and the

vice-president is fifty-nine years of age. He still has six or seven years, depending on where his birthday falls, of good service or perhaps more since the bank doesn't seem to have any retirement cut-off date.

Then we have an assistant V.P. with seventeen years of service, and another assistant V.P. sixty-two years of age with thirty-three years of experience. I would say it's adequately provided for.

Q. And if you were advising this bank, would you advise them that they had to go outside to find a replacement for the head of this banking department?

A. Well, not on the basis of these statistics, no. It looked to me that they have sufficient depth of experience within the banking department to bring one of these individuals to the head position.

Q. I'd like to turn now, if we might, to the mortgage department, and ask whether there is anything in your judgment, based on government Exhibit 645, which would suggest that Mr. Williams, immediate subordinate to the head of the mortgage department was not qualified to succeed the head of that department?

A. No. Once again he's fifty-seven years of age, and he has fourteen years of education and thirty-nine years of [fol. 3500] experience.

Now in a mortgage department of a bank, which is a highly-technical department, if this gentleman with the fourteen years of education and thirty-nine years' experience could not have been competent, I would have been amazed. I don't know why they could keep him this long.

Q. Professor, Mr. Thompson, who was formerly a high echelon officer of the Trust Company, has testified that if Mr. Thomas had retired, in all probability, Mr. Williams could have run this department.

Does this substantiate what the age, education and experience data indicates?

A. Yes, I certainly think that it would.

Q. I'd like to turn for a moment to the auditing department.

Does there appear to be any succession problem here?

A. We have an assistant auditor here, fifty-seven years of age, sixteen years of education, and thirty-nine years of service. I don't think there's any problem there. He cer-

tainly ought to be able to step in and take over for eight or ten years.

Q. Does it appear on the face of it that the bank would have to go outside to find an auditor?

A. No, I don't think that it does. It seems to me that [fol. 3501] this individual should be competent, just reading from the——

Q. I'd like to move on to the new business department and ask what the figures set out would indicate about the depth of the new business department.

A. Well, on the face of this exhibit, you have a department head fifty-nine years of age and forty-four years of experience, and he's followed by a vice-president forty-six years of age and twenty-five years of experience. For a new business department in a bank of this size, I'd say it was adequately staffed.

Q. You will note that the second man, nominally the second man in the new business department, resigned on approximately January 29, 1964. Do you have any comments as to what kind of a void that may have created?

A. Well, of course this would leave only one man in the new business department. I see no reason why they could not bring some other younger man into the department from one of the other departments in the bank if they so desired.

Q. The record indicates that this second man was a very, very able new business solicitor, Professor. Would this create any additional problems as far as you can see?

A. Well, of course, it's always a problem if you lose good personnel, but I think that the bank is substantial enough [fol. 3502] to be able to try some other individuals in this spot and could go outside to hire one if necessary.

Q. Can you comment on the balance in the trust department?

A. Well, the trust department is very strong, both from the standpoint of management succession, from the years of education and from the length of service. I'd say, for a bank this size, it's exceptional.

Q. Based on this review, how many of the six departments of Nashville Bank and Trust Company were without adequate provision for management succession from within the bank as of March 1, 1964?

A. I'd say the real estate department and with some possible exception the new business department.

Q. In your judgment, would these be major problems to a bank?

A. No.

Q. To a bank of this size?

A. No, I do not think so.

* * * * * * * *

[fol. 3503] By Mr. Weinbaum:

Q. Professor, you have indicated that higher educational and experience levels suggest higher competence, have you not?

A. Yes, I have.

Q. Are you familiar with a Congressional Report entitled "An Evaluation of the Management Succession Problem in the Commercial Banking Industry"?

A. Yes, I am.

Q. Have you studied this report?

A. I have.

Q. Are you familiar with the manner in which this report was prepared?

A. Yes, I am.

[fol. 3504] Mr. Weinbaum: Your Honor, we have a Government Exhibit marked for identification 660 which is a report on Management Succession prepared in 1964 for Congress and we would at this time like to move this report into evidence.

Mr. Farris: Excuse me, the number was what?

Mr. Weinbaum: It's 660, Mr. Farris.

Mr. Farris: Thank you. No objection.

The Court: Let it be admitted.

(Plaintiff's Exhibit No. 660 was received into evidence.)

By Mr. Weinbaum:

Q. Do you have a copy of this report, Professor?

A. Yes, I have.

Q. I would like to turn your attention to page—before we do that, Professor, can you explain for the Court the sampling which was employed in this particular report?

A. Yes.

Q. How many banks were involved in the sampling?

A. The bank, the entire bank population of 13,133 banks, comprised the universe for the sample. Out of this 13,133 banks, the sample included 2,655 banks in all of the standard metropolitan areas and the rest of the country not so classified.

Q. Do you know whether or not there is a representative [fol. 3505] sampling among these 2,655 banks of national banks, Federal Reserve member banks, and non-member banks?

A, Yes, it was a representative sample.

Q. We would like to direct your attention to page 35 of this report, Professor, particularly to Table T-1, and Table U-1. In looking at the twenty-five to fifty million deposit size *category first, for Table E-1, we would like for you to compare* the statistics as evidenced by Government Exhibit 646 for the second to the fifth highest paid officers of the Trust Company with the statistics set out in that column of Table T-1.

A. Yes, looking at Exhibit 646, the average for the second to fifth ranking officer in education is sixteen years. This would fall within the upper quartile of the sample for the banks in the bank in the twenty-five to fifty million ranges.

Q. And what would this indicate about the educational levels of the second to fifth highest ranking officers of the Trust Company?

A. It indicates for banks of this size that the Nashville Bank and Trust Company was certainly in the upper range as far as education is concerned, average education.

Q. Turning for a moment, Professor McNichols, to Table U-1, where these same figures are set out for the top ten officers, what is the average years of education figure for [fol. 3506] the officers of the Trust Company?

A. It's 14.1 years.

Q. That's for the first to tenth ranking?

A. First to tenth ranking officers, yes, sir.

Q. And where does that average fit into the Table U-1 data?

A. It would fall in the medium range, with only five per-

cent at the upper end, which would exceed it in the rest of the country.

Q. Is it fair to state then that as to the educational level of the second to fifth highest officers, the Nashville Bank and Trust Company was above average?

A. Yes, it would.

Q. And as to the highest education level of the top ten officers, the ten officers of the Trust Company were average?

A. Average or a little better, yes.

Q. I'd like to move on, Professor Nichols, to page 43 of this report, and direct your attention to tables W-1 and X-1.

Could you explain for us what these tables are designed to reflect?

A. Well, these tables combine the education and the experience or length of employment of the second to fifth highest officers for all banks.

[fol. 3507] A. Table X-1 does the same thing, it combines the education or experience and length of employment for the top ten officers for all banks including those in the south.

Q. Would you take Government Exhibit 646 and the averages set out there, Professor, for years of education and length of service in those stated categories and first apply the averages for the second to fifth ranking officers to Table W-1?

[fol. 3508] A. Yes. As related to Table W-1, the sixteen years of education and over thirty years of experience would put it in the highest five percent of the sample.

Q. Can you apply the first to tenth ranking officer averages of the Trust Company to Table X-1?

A. Yes. Table X-1, the 14.1 years of education and 28.7 would drop them into the 21 to 30 year bracket. They would be within the 32 percent group which would take them into the upper half or better for all banks in the country.

Q. Professor McNichols, based on these comparisons which you have just commented on, what conclusions do you draw as to the age and educational backgrounds of the officers of the Trust Company in comparison to banks throughout the country?

A. I would say that the Nashville Bank and Trust Company, comparing their education and length of service with

the sample within the survey, compare very favorably; and in certain respects they are above the average.

Q. Will you restate what inferences can be made from higher levels of education and experience?

A. Yes. Judging any managerial group, these are two of the most important factors we are looking for—their experience and their technical competence as exhibited by their length of experience and their formal education.

[fol. 3509] Q. Where do most presidents of banks come from?

A. You mean within a single organization?

Q. Yes, sir.

A. Most likely they are promoted from within the bank itself.

Q. Do you know whether or not it may have been likely that the Trust Company could have elevated someone from within?

A. Yes. In looking at the personnel of the Trust Company, it seems to me there were several individuals who would have been likely candidates for the presidency.

Q. What do you base this comment on?

A. I base it on their education, their position as top vice-presidents, and their years of experience in banking.

Q. Mr. Weaver and other witnesses have indicated that Mr. Thompson and Mr. Parker were not considered candidates for the office of president because they only had had trust experience and lacked commercial banking experience. Would you comment on this, please?

A. Yes. I think that these individuals would have been excellent candidates from what I can see on these exhibits as president. The president, as he moves up to the chief executive spot, does not have to have technical competence in all phases of banking.

[fol. 3510] If you move a man up from the Banking Department, I guess you could say he doesn't have to have technical competence in the Mortgage Department or the Trust Department. His job, his function, is quite different. He operates as a leader, as an integrator of the personnel; and of course in banks of this size the individual is highly concerned with the relations of the bank.

Q. Do you know whether or not Mr. Hackworth had had

much trust department experience before he came to the bank?

A. I understand that Mr. Hackworth was formerly an officer with a railroad prior to coming to the presidency of the bank, although he had been on the board of directors of the bank.

Q. Can you make any comment, then, with regard to the additional or less than additional experience that a man like Mr. Parker or Mr. Thompson might have brought to the presidency of the bank?

A. I don't think it would have been any handicap at all. Mr. Parker, for example, had thirty-seven years of experience and nineteen years of education. He had gone to banking schools. And certainly in the banking school they don't confine themselves to trust work.

I believe he would have been technically competent and could have handled the job.

[fol. 3511] Q. And you have indicated that technical competence is not a prime criterion for the presidency of an organization?

A. No, it is not a prime consideration.

Q. Still using the Jacobs Report, Professor, I would like to direct your attention to pages 32 and 33, which designate the channels of recruitment for the highest paid officer; for the second highest paid officer; and for the third highest paid officer.

What do these charts reflect, Professor McNichols, with respect to the source of presidents, second ranking, and third ranking officers?

A. Looking at the chart for banks in the size $25 to $50 million, promoted from within accounts for forty percent.

Q. For the highest paid officers?

A. For the highest paid individual. Then, as you move down to the second and third, fifty-one percent for the second highest paid officer, and fifty-five percent come from within the bank for the third highest paid officer.

This indicates, of course, they are more likely to go out to find the president of a bank outside of the bank than you are to find someone in the second or third echelons.

Q. Then why do you think this might be so?

[fol. 3512] A. I think that this is probably because you have back-up people in the banking areas and you need

technical competency. For example, you want a man who is technically competent in loans or commercial banking to head your Banking Department. You want a man who is technically competent in the Trust Department to head your Trust Department in trust work, preferably a lawyer, of course.

When you reach the presidency, you are looking for a man who has more comprehensive and conceptual ideas. While his technical competency is ideal, hopefully you would like to have it in all fields of banking. But certainly it is not as necessary as it is in a specific part of the bank.

Q. To your knowledge are presidents of banks commonly found from outside the bank?

A. Yes, they are. I believe this chart supports that.

Q. Referring to those charts once again, Professor, after promotion from within, what is the next greatest source of presidents for the banks in the $25 to $50 million category?

A. Came from another bank: I think twenty-three percent.

* * * * * * *

[fol. 3513] Q. I would like to direct your attention once again to Government Exhibit 645, "Management Inventory of the Trust Company," and ask whether or not this exhibit indicates that over the last ten years any thought was given to the recruitment of officer personnel by the Trust Company.

A. Yes, I definitely think it does. Looking through the banking department, you will find individuals twenty-eight and twenty-five years of age, and one of forty-two years of age, who have had five, seven, and eight years of experience.

If you look into the trust department you find an assistant trust officer, thirty-two years of age, twenty years of education, five years of experience; one thirty-eight, sixteen [fol. 3514] years of education, four years of experience; one thirty, sixteen years of education and four years of experience.

It looks to me as if they certainly have been looking for management succession at this particular date.

* * * * * * *

[fol. 3515] Q. Based on your review of the composition and number of officers of Nashville Bank and Trust Company, and a consideration of their ages, education, experience, and reputations for professional competence as of [fol. 3516] January 1964 and up through March, the time of the merger agreement, would you state whether or not the Trust Company was adequately staffed to provide for proper succession in the event of retirements, deaths or other circumstances?

A. Yes. From the evidence that I have before me, I would say that they definitely were. The age and experience factor, the distribution and their education, indicate that they had management succession within the bank.

You might perhaps exclude the Real Estate Department in this summary.

Q. With regard to the Real Estate Department, do you conceive of that as being any major problem?

A. I don't think it is a major problem at all. You are really dealing with a technical kind of thing here, and there is no reason—you could get somebody from outside of the bank and bring them in.

Q. Professor, could you make any sort of judgment as to whether the management inventory of the Nashville Bank and Trust Company may have in fact been a plus factor to Third National Bank in this merger rather than presuming that the larger bank had a reservoir of management talent that was needed by this smaller bank?
is very possible that the Third National Bank would have

A. Once again, judging from the exhibits, I would say it [fol. 3517] acquired some very competent personnel in this merger.

Q. Thank you. Can you describe some of the talent analysis work that you have done?

A. Yes. Looking at salaries, of course, you are attempting to equate the salaries to the income of the organization. You are attempting to equate it to levels of competition that the particular organization is concerned with, and you are attempting to give some overall compensation package that will be equitable and hopefully attract employees and maintain morale and keep a low turnover of personnel.

Q. How do you arrive at a conclusion that a company or a bank is paying salaries which are too low?

A. First of all, I believe you will look at the caliber of people that they have in the bank, their educational level, their experience level; you will look at the turnover rate, and you would attempt to assess the morale of the individuals within the banks.

Q. Would the factor of not being able to hire people also be an indication of low salary level?

A. Yes. If you looked at the personnel and all you found were people in the upper age groups and long years of experience and no one coming along at a younger age, then you might very well conclude that they are having difficulty in hiring people.

Q. Is the size of a firm a factor in determining its salary [fol. 3518] structure?

A. Yes, it definitely is. It is in industrial firms, and it is in banking.

Q. Can you state whether or not it is generally true that larger firms would pay higher salaries than smaller?

A. It is generally true that larger firms pay higher salaries than smaller ones.

Q. Would you consider it appropriate to compare the officers' salaries of a bank in excess of $300 million in deposits with those of a bank of $47 million in deposits?

A. No, I would not.

Q. Would the fact that the Nashville Bank and Trust Company's salaries were lower than those of Third National Bank indicate to you that the Trust Company's salaries were below average?

A. No, it would not.

Q. How much larger was Third than Nashville Bank and Trust Company as of the end of 1963? Do you know?

A. I believe it was 7.2 times larger.

Q. And that would be measured how?

A. Assets.

Q. Would it be necessary in determining whether a bank is paying adequate salaries to compare such salaries to those paid by banks of comparable size?

A. Yes, I think it would be the most valid comparison.

[fol. 3519] Q. Professor McNichols, have you examined Defendants' Exhibit 47, the American Management Association survey, which was put into evidence with Mr. Ward Howell, the recruitment specialist?

A. Yes, I have.

Q. And have you reviewed the testimony of Mr. Howell in connection with this exhibit?

A. Yes, I did.

Q. Did you find any errors in the manner in which Mr. Howell used this exhibit with the Nashville Bank and Trust Company's salaries?

A. Yes. I think that Mr. Howell was using the entire compensation package and contrasting it to only the salary of the Nashville Bank and Trust Company.

Mr. Farris: I don't believe he knows what Mr. Howell was doing. I think he is competent to testify about it if he did. He said, "I think," and——

By Mr. Weinbaum:

Q. Do you know?

A. Yes, I know Mr. Howell compared the entire compensation package with only the salaries of the Nashville Bank and Trust Company.

Q. And the record reflects such a comparison?

A. Yes, it does.

[fol. 3520] Q. Using this exhibit, Professor McNichols, let us go through the classifications Mr. Howell used and compare salary to salary, rather than salary to an entire compensation package, as was done by Mr. Howell.

I would first like to direct your attention in the $25 to $50 million asset group to the president's salary. What is the salary of the president of the Trust Company as reflected in Government Exhibit 645?

A. It is $28.4 thousand.

Q. That would be, instead of the $34,300 as Mr. Howell testified?

A. Right.

Q. Moving on to the vice-president of the banking department, Professor McNichols, what is the salary of Nashville Bank and Trust Company?

A. It is $11,700.

Q. The record indicates, does it not, that Mr. Howell equated this position at the Trust Company with the AMA category of executive vice-president?

A. Yes, it does.

Q. Is there any problem with making such a comparison?

A. Yes, I think there is a problem. If you take the connotation of the title Executive Vice President, this assumes generally he will be one of the chief operating officers of [fol. 3521] the bank—not just a single department, such as it has been compared to. And it also frequently in the smaller banks, you will find that an executive vice-president may be the one who really runs the bank and who might be somewhere just a shade below the president of a bank in salary.

Q. Could we for purposes of a comparison have chosen just as well the top senior vice-president in the American Management Association table?

A. I think that might have been a more valid comparison, yes.

Q. And that man received what in salary?

A. $15.7 thousand in the AMA table.

Q. Turning to the mortgage department head, what salary was paid by the Trust Company?

A. The Trust Company paid $10.56.

Q. That's $10,000——

A. $10,560, yes.

Q. And the American Management table indicates that the mortgage department head received what in salary?

A. Are we looking here at the senior investment officer?

Q. The senior mortgage officer on the second page.

A. Yes; he received $10.3.

Q. Instead of what figure which Mr. Howell said he re- [fol. 3522] ceived?

A. $12,000.

Q. So in this instance there is a difference putting the Trust Company's salary ahead of the American Management Association figure?

A. Yes. It puts it $200 ahead of the American Management Association figure.

Q. What are the comparative figures for the auditor, Professor McNichols, the auditor of the Trust Company? That would be No. 11 on Government Exhibit 645.

A. The auditor of the Trust Company was getting $7,154 —the department head; and the assistant auditor was getting $7,494.

Q. What would the American Management Association position be receiving, senior auditor?

A. Senior auditor?

Q. The bottom of page 219.

Q. Senior auditor in salary is receiving $8,900 in the AMA survey.

Q. Compare the new business department head with that of the new business department man in the American Management chart.

A. In the Nashville Bank and Trust, the new business department head was getting $10,788. In the AMA survey——

[fol. 3523] Q. Mr. Howell used the senior customer relations executive on the first page.

A. The senior customer relations executive was getting $9,500.

Q. Let's add another comparison which Mr. Howell did not choose to make. Let's look at the senior trust officer of Nashville Bank and Trust Company and compare it to the like position of the American Management Association chart. How do these figures compare?

A. In the Nashville Bank and Trust Company, the senior trust officer is getting $14,194, and in the American Management survey he was getting $14,100.

Q. Would such a survey indicate to you, Professor, that Nashville Bank and Trust Company's salaries for comparable functions were favorable or unfavorable in relation to other banks its size?

A. I believe that it would indicate that the Nashville Bank and Trust Company salaries were favorable.

Q. Would such salaries indicate that Nashville Bank and Trust Company's officers' salaries were not only generally comparable, but in three of the six instances just recited were higher than those of comparable sized banks throughout the country?

A. Yes, it does.

Q. Can you state whether or not salary levels in the South differ from those in the country as a whole?

[fol. 3524] A. To my knowledge, the general salary levels in the south are lower.

Q. There's testimony in the record that salaries in the south are about twenty-five percent lower than in other

areas. We would like to ask what effect if any would this additional factor have on the comparability of the Trust Company's salaries with those of the salaries of banks set out in this American Management Association exhibit?

A. It would tend to make the Nashville Bank and Trust salaries look more favorable.

Mr. Weinbaum: Excuse me, I would like to correct the record. The exhibit of the Defendant banks which is the American Management Association Survey.

By Mr. Weinbaum:

Q. Can you comment on the size of the sampling used in this American Management Association chart, Professor McNichols?

A. Yes, it is a very small sample, thirty-one banks.

Q. And yet the Trust Company compares very favorably?

A. Yes, sir.

Q. As you have indicated.

A. Despite the very, very small example, the Trust Company still compares very favorably.

[fol. 3525] Q. Have you had occasion to review any other bank officer salary statistics, Professor McNichols?

A. Other than the statistics we have reviewed here?

Q. Yes.

A. Yes. I have.

Q. And can you describe for us what other salary information you have studied and reviewed?

A. I reviewed the salary information of the Federal Reserve Board which was done in conjunction with the evaluation of management succession problem in commercial banking.

Q. The Jacobs report?

A. Yes.

Q. Was data accumulated——

A. Yes.

Q. —with regard to compensation?

A. Yes, salary compensation was accumulated with the questionnaires that were sent out with the Jacobs report.

Q. Do you know what size sampling was used in connection with the obtaining of this salary data?

A. Yes, the same size sample that was used in the initial report.

Q. And that is how many banks involved in that sample?

[fol. 3526] A. The universe, the entire population of the banks of 13,133 and the sample, entire population of 13,133 banks, and the same sample, 2,655 banks out of this universe.

* * * * * * *

[fol. 3527] Q. Would you please explain what is meant by small population area in Exhibit 651, 653, and 655.

A. Yes, this is a category D in their sample. It's all other standard metropolitan areas.

Q. What are you referring to?

A. I'm referring to Appendix A in the Jacobs report.

Q. And that is at page 55?

A. On page 55.

Q. Continue, sir.

A. Standard metropolitan areas with the banks' deposits of one billion dollars or less in the area, and all of the rest of the country which would take in the small population areas.

[fol. 3528] Q. And for what year was this data accumulated?

A. Year 1962.

Q. And it was derived from bank examination reports, is that correct?

A. Yes, sir, it was derived from the bank examination reports for that year.

Q. Professor McNichols, the last column on each of these tables, what is that column of statistics representative of?

A. That's representative——

Q. The column on the right.

A. Yes, of the number of banks that were sampled I believe in this particular category.

Q. The number or the percentage?

A. Percentage. Percentage. It's a hundred percent, excuse me.

Q. Looking at Government Exhibit 651, for instance, do you——

A. Yes.

Q. And the seven percent up in the right-hand corner.

A. That would be seven percent of all of the banks in that classification would be sampled.

Q. Seven percent of the banks in the zero to 5,999 category?

[fols. 3529-3534] A. Right.

Q. Seven percent of the total?

A. The total, yes.

Q. The word "compensation" that is used throughout each of these statistical tables, Professor McNichols, what is meant by that terminology?

A. That refers to salary only.

Q. It does not include fringe benefits or bonuses of any sort?

A. No, it does not.

Q. The column of figures at the left, Professor, that is zero to 5,999, and so forth, do you know whether or not those are dollar amounts?

A. Yes, they are dollar amounts.

Q. And all of the other statistics are percentages?

A. They are percentage for the banks within the various categories.

* * * * * * *

[fol. 3535] Q. Professor McNichols, what do these six tables indicate with respect to the salary scales of the large and small banks?

A. They indicate that the smaller banks are paying lower salaries than the larger banks.

Q. And do all of these tables bear that fact out?

A. Yes, they all have the same step effect looking from [fol. 3536] the left to the right-hand column.

Q. Can we now look at Government Exhibit 646, the averages of salary for the second to fifth ranking officers and first to tenth ranking officers of the Trust Company, and would you kindly interpose those averages on the averages for banks in the twenty-five to fifty million deposit category starting with government exhibit 651?

Where does—with regard to Government Exhibit 651, which is compensation of the highest-paid officer, where does the president of the Trust Company's salary fit into that exhibit?

A. It would fall in the upper range of the medium group. There were sixty-one percent.

Q. Sixty-one percent means what?

Mr. O'Malley: If the Court please, until such time as this document is in evidence, I don't think there is a valid basis for comparison.

The Court: Well, I'm allowing this to go in subject to my ruling. I'm reserving ruling on it.

[fol. 3537] Q. Where does the president's salary fit in, Professor?

A. It would fall in the upper range of the median, the upper part of the median range.

Q. Turning to Government Exhibit 652, the compensation of the highest paid officer for all banks—that is, those outside the small metropolitan areas as well—where does the president's salary fall there?

A. It would fall in the median range, in the upper portion of the median range, 57 percent.

Q. Regarding Government Exhibit 653, and looking at the average salary for the second to fifth ranking officers, what is the average salary of the second to fifth ranking officers of Nashville Bank and Trust Company?

A. For which group?

Q. The average salary of the second to fifth ranking for the Trust Company.

A. $11,760.

Q. And applying that average to Government Exhibit 653 for banks in small population areas, where do the Trust Company's salaries fall?

A. Just about in the middle of the median range of the 60 percent group.

Q. Will you state whether or not each individual salary of the Trust Company officers two through five does or [fols. 3538-3539] does not fall within that $10,000 to $14,999 category?

A. They all fall within that category.

Q. Thank you. Turning to Government Exhibit 654, the all-bank classification of the second to fifth highest paid officers, where does the Trust Company average fall?

A. It falls in the median group again, 58 percent.

Q. Turning to the top ten officers tables, Professor Mc-

Nichols, what is the average salary of the first through tenth ranking officers of the Trust Company as reflected in Government Exhibit 646?

A. $12,169 for the Nashville Bank and Trust Company.

Q. Would you apply that average to Government Exhibit 655?

A. It falls about exactly in the median range of the sample.

Q. What percentage of banks pay salaries in excess of that amount in that size category?

A. Only 19 percent.

Q. Finally, Government Exhibit 656: Can you apply the average for the first through tenth ranking officers to the appropriate category of 25 to $50 million banks?

A. Yes. It falls in the median group, 74 percent. Only 26 percent of the banks pay higher salaries in that range.

[fol. 3540] Q. For a bank in its size category, Professor McNichols, based on this sampling of 2655 banks throughout the country, a representative sampling which includes national, non-member, and member banks, what conclusion do you reach as to the adequacy of Nashville Bank and [fol. 3541] Trust Company salaries in relation to banks in its size category of $25 to $50 million?

A. In this sample the bank appears very favorable. It falls in the median group in practically every one.

Q. Is there any question at all in your mind, based on the Defendants' Exhibit 47 and based on this wider sampling which you have just testified to, that the salaries of Nashville Bank and Trust Company were adequate?

A. Yes. They compared very favorably in both exhibits.

Q. Is there any question in your mind that these salaries are adequate?

A. No, there is not.

Q. In view of the fact that Nashville Bank and Trust Company was paying competitive salaries for banks of its size prior to this merger, do you have an opinion as to whether a salary increase would have been immediately necessary had the Trust Company remained independent?

A. I do not think that a salary increase would have been imminent. Looking at the number of younger people they had and the people they had in line for succession, I would say that there was no dangerous problem.

Q. Will you state whether or not it might have been more necessary for Third National Bank to raise these salaries than it would have been for Nashville Bank and Trust Company?

[fol. 3542] A. Yes. I think it might have been much more necessary for Third National to raise the salaries. They are somewhat larger than the Nashville Bank and Trust Company. They have a certain image and they would have to bring their salaries up to equate the level of all the other salaries between the banking institutions.

Q. Could they have had some employees in comparable positions making one salary and have the people who came in from the Trust Company in comparable positions making a lower salary?

A. No. I think that the Third National, I would believe, would most likely be very cautious about this. It would want to effect the merger in the best way possible, and it would not want to have inequities in salaries.

Q. So that, as far as the raising of salaries was concerned, can you state whether or not from a business point of view it was more of a necessity for Third than it was for the Trust Company had it remained independent?

A. Yes, I definitely think so.

Q. Are you familiar with the salary increases which were, in fact, instituted by Third National Bank?

A. Yes, I am.

Q. For Nashville Bank and Trust Company employees after the merger?

A. Yes.

[fol. 3543] Q. Are you familiar with the financial position of Nashville Bank and Trust Company on December 20, 1963?

A. Yes, I am.

Q. What was the net income before taxes of the Trust Company as of that time as reflected in its report of income and dividends?

A. $566,730 before taxes in 1963.

Q. Let us assume for the purposes of our discussion this morning that Mr. Weaver wanted to pay the same salaries as the larger bank in town. Do you have an opinion as to whether the bank was in a financial position to raise sal-

aries in the amount of $87,995 as was ultimately done by Third?

A. Yes, I think they could have.

Q. To what extent would such an expenditure have reduced Nashville Bank and Trust Company's net income before taxes?

A. With a salary increase of $87,995, it would have reduced net income before taxes to $478,735.

Q. Are you referring to a work sheet there, Professor?

A. Yes, I am.

Q. In your experience——

Mr. Farris: If the Court please, on this I would just like the record to note that this witness is testifying from a [fol. 3544] report in front of him and, not being an accountant or a bank management expert, I don't believe he is competent to talk about how much it would reduce income—only to apply those mathematical computations to the figures he has in front of him.

We concede that that much is being done, and his mathematics may be correct.

The Court: I don't know just how he went about it. The record doesn't show.

By Mr. Weinbaum:

Q. Professor McNichols, are you an accountant?

A. Yes, I am. I have had accounting training, both at the undergraduate and the graduate level, and I have worked for accounting firms. I am a consultant at the present time to Arthur Anderson, public accounting firm in Chicago.

Q. Have you looked at the reports of income and dividends and extracted figures onto a work sheet and made these deductions?

A. I spent the greater part of my career doing this, yes. I have made projections and analyses as a consultant.

Q. Have you done that in this case?

A. Yes, I have.

* * * * * * *

[fol. 3545] Q. In your experience, Professor McNichols, to what extent are fringe benefits important to the successful hiring and retention of personnel?

A. I think it might vary to an extent, but, generally speaking, I don't believe they are too important.

[fol. 3546] Q. What in your view is the most important single consideration that a prospective employee looks to before taking a job?

A. I believe the compensation—the salary level.

Q. When you say compensation, what do you mean?

A. I mean salary.

Q. I would like to direct your attention, if we might, to page 24 of the report on management succession, Government Exhibit 660, the Jacobs Report, and look at Table K-1, which is entitled, "Most Common Reason for Rejection, All Banks."

I would like to ask you, looking over at the All-Bank category, whether or not those figures indicate percentages.

A. Yes.

Q. And can you state what the most common reason stated for rejection of job offers was among all banks as set out in this table?

A. Yes; salary.

Q. What was the second most common reason given for rejection of a job offer?

A. Location problems.

Q. What percentage of rejections were attributable to fringe benefits?

A. Five percent.

[fol. 3547] Q. Do these tables indicate to you that fringe benefits are not as important as other considerations with regard to accepting job opportunities?

A. Yes. According to this table the fringe benefits are a very minor cause for rejection of jobs.

Q. Is this generally your experience in considering the salary and managerial aspects of a business operation?

A. Yes. Salary is always a major consideration.

Q. Are you generally aware of the fringe benefits offered by Nashville Bank and Trust Company and Third in 1963?

A. Yes, I am.

Q. Turning our attention to Defendants' Exhibit 31, which is a tabulation of the comparative fringe benefits of

the two institutions, Professor McNichols, as of 1965 for Third National Bank and as of 1963 for Nashville Bank and Trust Company, I will ask you first whether you have reviewed this table?

A. Yes, I have.

Q. Are you also familiar with the testimony of Mr. Bivins, who testified as to certain adjustments and corrections that had to be made to this table?

A. Yes, I am.

Q. Will you state whether or not the fringe benefits of the two institutions as set out in this table were generally comparable?

[fol. 3548] A. They are generally comparable. You see some exceptions, of course, here in the case of retirement. But that is omitted here in the percentage column.

Q. What in your view is the major exception to your statement that these benefits are generally comparable?

A. Retirement benefits.

Q. And the percentage of total salary going toward retirement benefits for Third National Bank in 1965 was what?

A. 10.5.

Q. Mr. Saxon, when he testified, stated at page 3353—and I would like to quote this: "I think this"—and he was referring to funded pension plans—"is one of the great problems we have in the banking business, with some forty percent of the banks in the country today. I say with a great deal of regret that I think the banking industry does not yet provide any funded or substantial pension or related benefits for this personnel."

It goes on at page 3354 to say, and I quote again: "I am not condemning Nashville Bank and Trust for this, because others of that and lesser size did so."

Are you familiar with the pension plan adopted by Nashville Bank and Trust Company in 1961 as is set out in Government Exhibit 590?

A. Yes, I am.

[fols. 3549-3551] Q. Can you state whether or not this is a common type of a pension plan?

A. For a smaller institution it is not at all uncommon. It is tied to Social Security, and banks in this size, as stated

by Mr. Saxon, if they have a pension fund at all, it would most likely fall in this category.

* * * * * * *

[fols. 3552-3553] Q. Is there any magic to the fact that a pension plan may be funded?

A. No, there is no magic to it. Funding in the strictest sense means the past services of the employees have been provided for in the fund. There are large companies that do not fund—Western Union, U.S. Steel. There are a great number of middle size and smaller companies that do not fund their pension plans.

* * * * * * *

[fol. 3554] Q. Would a bank the size of Nashville Bank and Trust Company generally be providing the same quantity or type of fringe benefits that a bank seven and a half times this size offered?

A. No, I do not think that you would expect that it would.

Q. So the same disparity as to fringe—as to salary would apply to fringe benefits?

A. I assume that it would, yes.

[fol. 3555] Q. Had Nashville Bank and Trust Company remained independent and not merged with Third, would you have an opinion as to whether it would have been necessary to increase fringe benefits like Third National Bank did for the employees of the Trust Company?

Mr. Farris: Now if the Court please, we object to that as speculative. I think that is reaching way out to the future.

Mr. Weinbaum: Your Honor, if we may, Mr. Fleming has talked of the imperativeness of making certain expenditures to keep his bank——

The Court: Let me have her read that back to me.

(The last question was read by the court reporter.)

The Court: For the employees of the Trust Company. To increase fringe benefits, would it have been necessary. You mean by that what? To keep the employees?

Mr. Weinbaum: Yes, had the Trust Company remained separate, was the need as compelling as for the Third National Bank to do so.

The Court: It's a little bit speculative. I'll let him answer it for the present and see what his answer is. I may strike it and I may not.

[fol. 3556] By Mr. Weinbaum:

Q. You can answer the question, Professor.

A. No, I do not think that they would have had to increase their fringe benefits, and I would base this on the fact that they have younger personnel in the bank. They do not have fringe benefits as indicated by the other exhibit. Now as the bank continued to grow and progress, then I assume that it would have been logical that they would have increased their fringe benefits, but I would see no urgency for it in any one given year.

Q. Might there have been more of an urgency for Third National Bank to increase these fringe benefits?

A. Yes, once again the Third National Bank is the one that is absorbing and it would have to bring the fringe benefits up to the comparable level so that there would be an equity of fringe benefits as well as salary and of course the Third National Bank is the image bank in this consideration, it is not the small bank.

Q. Is it your testimony that it would have been impractical to have some employees of comparable rank getting more fringe benefits than others after the merger?

A. I would say it would be highly impractical.

Q. Assuming that fringe benefits, including the funding of past service and retirement plan, were a significant consideration to a prospective employee, which you have testi- [fol. 3557] fied is not the case, would you have an opinion as to whether or not Nashville Bank and Trust Company had Mr. Weaver and his associates retained control, could have increased fringe benefits including the funding of past service in the manner and to the extent that Third did when it took the bank over?

Mr. Farris: If the Court please, we object to that as being based on inference built on inferences, suppositions built upon other suppositions, and it is completely speculative.

Mr. Weinbaum: Your Honor, we wish to show here—we wish to meet their evidence on the proposition that it

was financially impossible, assuming these expenditures were necessary, and we say that in many cases, they weren't, but assuming they were, was this bank financially sound enough to make such expenditures, and we think it is important. This man is an expert witness, and we think he can testify.

The Court: You asked him a similar question a moment ago?

Mr. Weinbaum: About salaries.

The Court: Yes.

Mr. Weinbaum: That is correct.

The Court: I'll let him answer.

Mr. Weinbaum: Could the Nashville——

[fols. 3558-3562] The Court: He hasn't answered.

Mr. Weinbaum: No, he hasn't.

The Witness: Yes, I believe they could have paid this entire package of fringe benefits as indicated was paid by the Third National Bank. This would have reduced their net income before taxes to $402,805.40, according to their statement of condition as of 1963.

By Mr. Weinbaum:

Q. According to their statement of condition——

A. Condition.

Q. —or report of income?

A. Report of income, yes.

Q. And that $402,805 balance also takes into account the deduction for salary increase?

A. Yes, it does.

* * * * * * *

[fol. 3563] Q. Professor McNichols, from the standpoint of maintaining an image or bringing the image of the acquiring company to that of the acquired company, may it be necessary for the acquiring company to make certain expenditures which would not have had to have been made had the company absorbed remained in an independent state?

A. Yes, I think so. I believe in this instance, you have a large bank, a bank several times larger than the bank which was acquired which has a certain status in the community, a

certain symbol in the community, and there's no question but that they would have a different kind of business policy, and they would want to lend their imprint to this particular bank, and it may very well entail remodeling or changes. I hardly know of any mergers or acquisitions where some changes did not take place, both physically and otherwise.

Q. Would something like the mere addition of signs be the type of a thing which an acquiring company would have to spend money on which an independent enterprise would not have had to have done?

A. Well, if you go through the process of any merger where one is absorbed you have all of the problems of doing away with the old and creating the new, and this might [fol. 3564] entail in certain instances rather substantial changes.

I suppose there is also, in most mergers, and particularly when you are dealing with banking institutions which take pride in the imprint which they make in the community, because it is a highly-involved, public-relations type of business, that they should have a certain type of image and they would want to show, and I would suppose in this merger particularly, and that they are particularly active, and that they are going to make a better situation if they can and create, put their own imprint on this particular bank.

Q. Thank you, Professor McNichols.

Will you state whether or not, in your opinion, it would have been necessary to make the salary, fringe benefit and remodeling expenditures had the bank remained independent?

A. I certainly do not think that these expenditures would have been imminent, no.

* * * * * * *

[fol. 3565] Q. Assuming, Professor, that they were necessary, would Nashville Bank and Trust Company have been able to make all of them in 1964?

A. Yes. Referring once again to my work sheet, I believe that they could have made the expenditures and deducted them from the operating income before taxes, which would have reduced the total to $389,071.

Q. Professor, there has been testimony that certain other

expenses were necessary in order for the Trust Company to remain competitive had it remained independent. These expenditures were as follows: The creation of an auditing department, estimated cost, $17,820; the addition of a business development officer, $23,220; the creation of a credit department, $25,000; a conversion to semi-automation, which would cost $50,000; the establishment of a new branch office, estimated at $50,000; and the total of these five expenditures would be $166,040.

Assuming these expenditures were considered important to the competitive position of Nashville Bank and Trust Company, and further assuming that such figures accurately indicate the minimum costs involved in making them, would you have an opinion as to whether and in what manner these expenditures could have been made by the Trust Company?

A. I believe the Trust Company could also have made [fol. 3566] these expenditures. If you reduced the $389,071 as indicated previously by $160,000, you would get an income before taxes of $223,031.

Q. From a financial or accounting point of view, would the financial condition of this banking institution have been placed in jeopardy?

A. No, I do not believe it would have. I would refer you to the $106,000 in dividends that were paid in the year 1963, and also to the $200,000 which were transferred to the valuation reserve.

Q. What about the capital accounts?

A. I think the capital accounts were solid and adequate and the bank has no encumbrances. There is no indication it would have been jeopardized.

Q. Is it your testimony, then, that these additional five expenses could have been made in addition to the remodeling, the fringe and salary expenditures?

A. Yes, if it were imperative. Although it would be highly unusual for a bank of this size to make expenditures of that nature, I believe that they could have been made. And in view of the sound capital condition, of the bank, in view of the lack of encumbrances, and in view of the amount of $200,000 which were transferred to the valuation reserve, and in view of the fact that they paid $106,000 in dividends

of that year, I believe they could have been made without [fol. 3567] jeopardizing the position of the bank.

Q. Is it your testimony that they could have made any and all of these expenditures had they found the necessity to do so?

A. Yes, I believe they could have made these expenditures.

Q. Would there be any effect on the earnings of a bank which may have set out to make these expenditures?

A. Yes. You would assume that if these expenditures were made, they were made for the distinct purposes of increasing the profitability of the bank and obviously increasing its efficiency. For example, I refer you to some semi-automated machines, the branch office, the additional business development.

Certainly these people would not be added if there was not an expectation of a definite increase in the income of the bank.

Q. Professor, in your opinion would Nashville Bank and Trust Company, with its management inventory as constituted in March 1964, and faced with the expenditures which we have discussed this morning, would such an institution have been in your judgment an attractive investment opportunity to an investing group?

A. Yes, in my judgment I think it would have been a very attractive investment. These kinds of investments are con- [fol. 3568] stantly looked for by investment groups. I believe that the solid condition of a bank that had a good management inventory, that had a good position in the community, I think it offered a rather attractive investment.

Q. One last item, Professor. In connection with the charts, the IBM printouts, Government Exhibits 651 through 656, there was a request raised as to what the far righthand column in each one of these charts indicated. I wondered if you could clarify this, if you are able to for the Court?

A. Yes. I give the same explanation I did previously. I will try to clarify it at this time.

If you look at the chart, for example we will start with the first column, which is Salaries, zero to $5,999, and it states here that 8 percent of the banks in the under $10,000

category, under $10 million in deposits, fell into this salary classification.

Then if you move to the extreme righthand column you will find the figure 7 percent. This means that 7 percent of the banks in this entire population, small population area, including all of these banks, fell into this classification.

Q. How do you account for the fact, for instance, on Government Exhibit 651, that in the $75,000 to $99,999 and in the over $100,000 category, where there are designed certain percentages in the first two columns, there are no [fols. 3569-3591] percentages designated to the far right?

A. The small number, if you note, over $100,000, $75,000 to $99,999—only four percent of the banks fall in this category; and then you only have two figures of one in the $50 million to $100 million classification.

This would aggregate less than one percent of the total number of banks in this sample. So therefore it is not extended in the righthand column.

Q. And this would be the same explanation applicable to the other five charts as well?

A. Yes, it would be.

* * * * * * *

[fol. 3592] Cross-examination.

By Mr. O'Malley:

Q. Did you have any personal knowledge of the capabilities of any given individual in that bank?

A. As I stated previously, I did not interview, I have no personal knowledge of any of the individuals stated in this [fols. 3593-3600] management inventory. I predicated my judgment on the basis of the education, the years of experience, and the condition of the bank.

Q. Now let's take a look at Exhibit 645.

A. Yes, I have Exhibit 645.

Q. First let me ask you whom you feel would be most competent to decide whether a man should be president of a bank?

A. Well, I would assume that under an ordinary set of conditions that the Board of Directors and the retiring or outgoing president, assuming that he is available, should

have the best knowledge as to who would be most competent.

Q. You would agree, would you not, that they would have more knowledge and a better competency to judge who the president of a bank would be than someone who didn't know a single individual in the bank, would you not?

A. I certainly would.

* * * * * * *

[fols. 3601-3638] A. I stated at the beginning of your question, you asked me who is most competent to choose a president of the bank. I stated that the board of directors and the president of the bank, who would be the outgoing president, are the individuals who would be most competent to choose the president of the bank.

Therefore, I would certainly exclude myself from that group and I would put this kind of a situation into their hands, whether they erred in judgment or not.

To follow your line of questioning, they would be the most competent.

Q. And you could not determine from a paper such as this, without personal knowledge of the man?

A. You may or you may not be able to determine from this statistical background.

Q. I would like to talk to you about salaries here. Excuse me just one moment, Professor.

Does this chart also show that each of these men, both in the Trust Department and the Banking Department, who were referred to have been passed over by the board of directors eight years previously for the presidency of the bank after having had many years of service?

The Court: That shows they were passed over, definitely.

Mr. O'Malley: That's right.

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[fol. 3639] RALPH F. MILLS, was called as a witness by and on behalf of the plaintiff in rebuttal, and, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Weinbaum:

Q. Mr. Mills, would you please state your residence address?

A. 100 West Monroe, Chicago, Illinois. My residence?

Q. Your residence.

A. Des Plaines, Illinois.

Q. And your business address is——

A. 100 West Monroe, Chicago.

Q. What is your occupation, Mr. Mills?

A. I am a personnel recruiter for the banking [fol. 3640] field.

Q. Could you please trace for us your professional and business background?

A. My first employment was with a large fraternal insurance company, starting out as a stenographer and an assistant personnel manager in 1921 through 1926. In 1927, '28 and '29 I was secretary to General Dawes while he was vice-president of the United States—personal secretary.

After Dawes went to the Court of St. James in England I joined his bank, then the Central Trust Company of Illinois; and later the City National, which is now the Continental, after five years, up to 1936.

At the end of 1936 I was invited to be employment officer for the Federal Reserve Bank of Chicago by the then First Deputy Governor of that, Howard Preston, who I understand is a Nashville or Knoxville banker.

The Court: Preston is a Knoxville banker.

The Witness: Is he still living?

The Court: I am not sure.

The Witness: I am not sure.

The Court: There are a number of Prestons in the banking business.

The Witness: This was Howard K., Sr. He was First Deputy Governor of the Federal Reserve at that time.

[fol. 3641] At the end of 1936 and at the urging of a

number of banks in the Midwest area, we organized Financial Personnel to specialize in supplying personnel to the banks.

[fols. 3642-3643] Q. Can you explain how your firm operates?

A. Financially?

Q. The mechanics of placing an individual.

A. On the one side we receive requests for men from banks all over the country. On the other side we have bankers who have registered with us to effect a change.

We try to match the two of them to bring the right man and job together.

* * * * * * *

[fol. 3644] Q. Over the last five years, how many banks have asked Financial Personnel Service to assist in finding them a president?

A. About 160 for direct presidencies.

Q. How many of these banks were in the twenty-five to fifty million deposits category?

[fol. 3645] A. Most of them with a little bit either way.

Q. And why is it that most of these requests were in that size category?

A. Why is it?

Q. Yes, sir.

A. Well, I suppose it's because they had a definite need for a top man.

Q. Do the larger banks come to you and ask you to find them presidents?

A. Very seldom; they have their own personnel set-ups.

Q. Where did these requests over the last five years, up to 19—up through 1965, originate?

A. From coast to coast.

Q. How many bank presidents has your service actually placed each year over the last five years, 1961 through 1965?

A. On the average of 5.4 each year.

Q. How many of these men moved from other communities?

A. All of them.

Q. And how many of this total placed over the last five

years were placed in banks of twenty-five to fifty million in deposits?

A. Most of them.

*   *   *   *   *   *   *

[fol. 3646] Q. How many second positions in banks have you filled for each of the last five years?

A. By second position, you mean executive vice-president?

Q. That would be correct.

A. About twelve a year.

Q. How many requests do you get from—or how many requests did you get from banks over that period to fill this executive vice-president position?

A. Probably around three hundred. Now that's a rather difficult one, because many banks will come in and ask for a commercial lending officer or a vice-president or a number of categories when they really want a man to be a backup man to a president, which means the number two spot.

Q. Of these twelve a year that you have placed in the executive vice-president's position over the last five years, how many of these men moved from another community to accept employment?

[fol. 3647] All of them.

Q. And how many of this total were placed in banks of the twenty-five to fifty million dollar category?

A. Most of them with an exception maybe of two or three newly-organized banks.

*   *   *   *   *   *   *

[fol. 3648] Q. Can you state whether or not this might be a reason why you have not been as active in the southeastern part of the country?

A. I think that would be a reason, yes.

Q. Through 1963, and 1964, did any representative of the Nashville Bank and Trust Company approach you or your organization relative to finding officer personnel?

A. No, sir.

Q. Can you state whether or not there are qualified bank

personnel throughout the country who are seeking newer and better opportunities in commercial banking?

A. Right at the moment, I would say we would have between a hundred and fifty and two hundred qualified professional bank presidents available for changes.

Q. Are these individuals whom you have screened, interviewed, are familiar with, and reached the conclusion that they are qualified to be bank presidents.

A. Yes, sir, and I might add that most of them we have called on them in their own—at their own bank.

Q. And are any of these people bank presidents at this time?

A. Yes, most all of them.

[fol. 3649] Q. Is it a question then of a president wanting to move to a different opportunity?

A. It's a question mainly of wanting to move into a better opportunity and sometimes to a more promising geographical area.

Q. Mr. Mills, there has been testimony introduced by the defendant banks and by the intervenor to the effect that it is extremely difficult and virtually impossible to obtain successor bank managers or presidents and I wondered if you would please comment on this?

A. It's been my experience over these thirty years and ten years from the employer's side, that any bank that sincerely wants and needs executive management and is willing to pay adequate compensation for it will have no trouble in finding it. We can supply bankers to any section of the country.

Q. And these would be highly trained personnel?

A. Highly trained personnel, highly trained bank presidents.

Q. Are you generally familiar with the facts of this case, Mr. Mills?

A. Yes, generally.

Q. And does the opinion you have just expressed still apply, having considered the facts of this case?

A. Yes, sir.

[fol. 3650] Q. Where might you have turned, had you been asked to do so by the new ownership of the Nashville Bank and Trust Company, to find a president for the Nashville Bank and Trust Company?

A. First in filling any assignment, we would go to our files which would represent thirty years of interviewing bankers, and then if we didn't find, it would be very unusual, but if we did not find a qualified banker in that group, then we might advertise or seek him out in other ways.

Q. You have indicated, have you not, Mr. Mills, that at the present time you have one hundred fifty to two hundred qualified people seeking president's positions?

A. This is correct, out of a registry that runs—averages twelve hundred to fifteen hundred men, this is a moving market, this is a daily situation.

Q. And you have testified also that most of these men are presidents at the present time?

A. Most of them are holding presidencies and want to improve their status or for one reason or another.

Q. Can you tell us how many of this hundred and fifty or two hundred are either southerners by background or have an interest, an expressed interest, in working in the southern part of the country?

A. I would say roughly twenty per cent of them.

Q. Now how many of the executive vice-president candi- [fols. 3651-3653] dates—how many vice-president candidates do you have on your roles at the present time?

A. We would have about a hundred and eighty or ninety men that we have processed and put in what we call our system.

Q. And have you reviewed your files so that you could tell us how many of these executive vice-president candidates are either southerners by background or have an expressed desire to work in the south?

A. Probably twenty to twenty-five per cent without going into it in a thorough fashion.

Q. Mr. Mills, how many of those one hundred fifty to two hundred presidential candidates do you feel are qualified to run a forty-seven million dollar bank?

A. Making allowance for the personal factor, no two of us evaluate a person through the same eyes in the same light, I would say all of them.

* * * * * * *

[fol. 3654] Q. Mr. Mills, I would like you to consider the following facts to be true as stated:

A. A dynamic expanding financial community of approximately four hundred thousand people such as Davidson County, Tennessee is;

B. A well-established and financially sound commercial banking institution of forty-seven million dollars in deposits such as Nashville Bank and Trust Company which has always enjoyed a very fine reputation in this community;

C. An institution whose growth in recent years has not maintained the extraordinary rate over a ten-year period, but nonetheless was showing yearly increases;

[fol. 3655] D. An institution as of January the 15th, 1964, controlled by a group of stockholders with strong community and background, vast financial experience, and acumen and virtually unlimited contacts in the financial world throughout the country;

E. An institution with a board of directors which, though of advanced average age, was comprised of many of Nashville's most prominent business and professional people;

F. An institution with the financial resources to make any and all of the expenditures which, in the opinion of certain banking experts, were deemed to have been necessary to keep pace with the times, such as establishing another branch office, setting up a credit department, and purchasing semi-automated office equipment;

And finally, G. a roster of officers which, by virtue of age, education, banking experience, and reputations as bankers, provided for qualified successor management, in five of the bank's six departments, with only the real estate department lacking in this respect;

In your opinion, Mr. Mills, what would have been the likelihood that this bank could have found a satisfactory and suitable and able president to succeed to Mr. Hackworth's office?

[fol. 3656] A. Considering that environment, it is just impossible for me to conceive of any bank, a bank such as this, not finding a president—assuming that they were reasonable in their request.

Q. What do you mean by that?

A. The personal elements. If they were to select a man on the basis of his education, his years of experience, his activities civic-wise, they should have no trouble finding a man.

* * * * * * *

[fol 3657] Q. Mr. Mills, considering the background of Mr. Weaver and several of his associates as set out in [fol. 3658] the hypothetical question immediately preceding, assuming that Mr. Weaver and his associates did not desire to call on your firm to assist in finding a successor president, would you have an opinion as to whether or not Mr. Weaver and his associates on their own could have hired an able new president?

A. Obviously we like all banks to make use of our service. However, perhaps our biggest competitors are the bank relations men, the correspondent bank men.

I don't think they would have had any trouble had they contacted—say if Mr. Weaver had some contacts—and I am sure he had—with some of their big Eastern banks, some of their correspondent banks.

I think they would have had many men to choose from.

Q. Do you know whether or not the larger banks keep a listing of available bank officers?

A. Most of the large banks are in competition with us really. They maintain a registry, too, of qualified bankers. Banks today, as you know, offer just about every service to their correspondent banks.

* * * * * * *

[fols. 3659-3663] Cross-examination.

[fol. 3664] By Mr. Knight:

Q. But you have no personal familiarity with the Nashville Banking market?

[fol. 3665] A. No, sir.

* * * * * * *

[fol. 3666] Q. Would you say that it would be a difficult task to fill Mr. Hackworth's shoes, get a replacement that could perform from outside the community in the same manner that Mr. Hackworth had performed?

A. It would be difficult for him to come right in and perform in exactly the same manner. But I don't subscribe [fols. 3667-3668] to this indispensable man theory. We have had very little difficulty in moving presidents from one bank to another across the country—assuming that your management would give the new officer the proper induction, of course.

Q. Would you say also assuming that the new management might be willing to accept a new president who might not have some of the specific qualifications that Mr. Hackworth had and might not be capable of performing as effectively in this community as Mr. Hackworth had?

A. If they need a president, yes, sir. We can't expect to duplicate those personal factors.

Q. So the answer to that question is Yes?

A. Yes.

* * * * * * *

[fol. 3669] A. I think you would have to restate that question now. We have relatively little difficulty in finding presidents for banks whether they have a pension program or do not have a pension program if all of the other elements are there.

Q. So your answer to that question is that it is just not a significant factor?

A. That's right.

Q. Not that it represents a challenge of some kind?

A. With most men. Now, if you are seeking to pirate a man from a competitive organization in the same town, then that would be an important factor.

Q. You think it would be an important factor?

A. You have to offer everything in the book.

* * * * * * *

[fols. 3670-3674] Q. Are you familiar at all with the competitive situation in Nashville, the testimony regarding the competitive situation in Nashville, the fact that it is a highly competitive banking community?

A. No, I am not.

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[fols. 3675-3683] Q. So basically you do operate a referral service. You bring the people in and let them work it out?

A. This is right.

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[fols. 3684-3696] David A. Patterson, a witness called to testify in rebuttal by and in behalf of the plaintiff, after having first been duly sworn, was examined, and testified as follows:

Direct examination.

By Mr. Minicus:

Q. Will you state your present address, Professor Patterson?

A. Presently residing at 3609 Kesterwood Road, in Knoxville, Tennessee.

Q. And what is your present professional connection?

A. Well, I am an assistant professor in the Department of Economics at the University of Tennessee.

* * * * * * *

[fol. 3697] Q. You have undoubtedly observed in the record, Professor Patterson, that each of the three big banks in Nashville have testified that they compete vigorously [fol. 3698] with each other. Is this the sort of competition which you as an economist are primarily concerned with and in which you find these benefits and constraints that you have spoken of?

A. Well, it may be. However, this contention that com-

petition is intense is the typical defense of every oligopolist, every firm, as long as it is not a strict monopoly—and even some of the monopolies in this country will testify that they are faced by intense competition.

Certainly the Third National Bank's increase in its loan limit has enabled this bank to compete a little more strongly and perhaps more successfully for the custom of larger borrowers. There is no doubt about that.

* * * * * * *

[fol. 3699] The Court: On that point, you consider that you are dealing with two different concepts, do you not? One is competition, and the other is the convenience and needs of the community? These two concepts have been separated.

The Witness: They have been separated in the terminology, Your Honor, but I find it difficult conceptually to separate them. There are exceptions. There are cases of where the convenience and needs—in other words, there are various facets to convenience and needs. As far as [fols. 3700-3702] I am concerned, competition is necessary to insure that the convenience and needs will be met.

* * * * * * *

[fol. 3703] Q. Now as a result of your study, which I am certain included elements weighing on the physical condition in Nashville, its size, population, industry, what effect do you think this merger will have in the future or can have or may have in the future on the convenience and needs of the banking customers that you have decribed as limited to Davidson County in contradistinction from those that engage in this broad regional or national market?

A. Well, I can see no positive advantage and perhaps a negative advantage accruing to these particular customers. The increase in the loan limit is certainly of no advantage to them, no economic advantage. The increase in—this community was already well served by three so- [fols. 3704-3705] called full service banks, three large banks. There's nothing gained there, and as far as I have been able to find, I have searched and we have asked about

this, to see if there were any new services offered to the community as a result of the merger, that is services that could not have been obtained if it had not been for the merger. I know of none.

So as far as I can see, there is no positive advantage to the convenience and needs of the community; certainly there has been to Third National Bank.

Q. Now there's been a great deal of testimony in the record concerning branches. I'm certain that you have observed it, with regard to the convenience and needs of the community, is it economically feasible for a small or a medium-sized bank to open a large number of branches?

A. Well, there are—first of all, there are studies on this, the most recent and perhaps I suppose the best, by George Benston in the "Journal of Finance," in May, 1965, which which was taken from his dissertation done at the University of Chicago. He showed there that branching leads to increases in unit costs. I would concur with that.

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[fol. 3706] A. If we are going to restrict our laws to that extent, then why——

Q. In the case of the unit bank, are there also alternatives that would avoid this necessity of going downtown every time you wanted to bank?

A. Well, you can certainly—I think—I know on occasion I have just had my check mailed to the bank from my [fol. 3707] source of employment. I have also mailed my deposit from time to time so there are alternatives. They are not very—mailing deposits doesn't seem to be a very popular alternative, but at least it's there, and it certainly doesn't seem worth while to cancel out a decision making unit and a banking alternative especially for loans where these loans may be important to the survival of a small business, it doesn't seem worthwhile to cancel those so that I or anyone else has to drive fifteen minutes in order to make a deposit.

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[fol. 3708] Q. Now have you discovered any facts of business necessity in your study of the record?

A. Well, business necessity would apply to two sides, the first would be the Third National Bank. The Third National Bank, from every bit of evidence that I have read is an extremely aggressive, well-managed bank, and certainly didn't need to capture the Nashville Bank and Trust Company out of business necessity, as I would see it.

Saxon himself, let's see, page 3311, made a long statement as to how well run this bank was and highly regarded, and I know one of my students from Nashville, when he heard I was going to come up here on this case, commented to me why this was a wonderful bank, and that it was extremely competitive. He thought that it had done a lot of good for Nashville. I would agree.

So the business necessity doctrine to the extent that it's a doctrine, I'm not quite sure about that, certainly doesn't apply to Third National Bank's side.

Now on the other side, would it apply to Nashville Bank [fol. 3709] and Trust? Well again, all I would—I was extremely impressed. I don't know any of these people personally, but at least I saw some of their job titles, where they stand in the community.

Weaver and his twenty-two associates certainly seem extremely capable of running a bank, and Weaver himself, page 1537, and I believe somewhere else—I don't have the page number—referred to the fact that they bought it with the intent of operating a bank, that they did not intend to merge at all.

So I can see no business necessity here. In fact, I would —well, I imagine that if Weaver and his twenty-two associates had maintained this bank, that there would have been some fireworks going on in the banking circles in the Nashville community, because these people had a lot of money behind them. It might have been an interesting case study in the effects of competition.

Q. Now a number of witnesses for the defense testified since the merger, competition is as keen or keener than it ever was before the merger even though there are only three major banks left in the city.

What meaning would a economist attach to a statement of that nature?

A. Well, as I noted before, there are various understandings of the meaning of the term "competition." Bell [fol. 3710] Telephone Company, for instance, is sure that they compete, they are in competition. Firms that merely advertise and never cut price insist that they are in competition. This is not the kind of competition necessarily that our laws are designed to protect.

The kind of competition that our laws are designed to protect is the kind of competition that guarantees the consumer alternatives, the kind of alternatives where the sellers are constrained to sell to them in order to make a satisfactory profit, a lot of competition in terms of price, quality, service, the full range of the things. I think Dr. Wolf covered that quite adequately. That's the first point that there are various definitions of competition.

All business men compete, I'm sure that they would all testify to that, and as they understand the term, they do. It's just that the economist places a much broader definition on the term of competition.

The other aspect of it is that we have had in this Nashville community a relatively stable situation in banking for some period of time, I think. Now we have a merger which rocks the boat, and we have testimony from Mr. Fleming on the effect of what happened right after this merger, that the other banks tried to capture customers who were perhaps dissatisfied.

Mr. Saxon, I think, referred to the fact that banks [fols. 3711-3714] immediately after a merger may lose as much as twenty percent of their business, so it's understandable that you would get a little flurry of competition.

It's interesting that this is exactly what oligopoly theory tells you will happen. That you have had an equilibrum, equilibrum has been disturbed by some move, especially a horizontal merger of this sort, you have upset—First American, for instance, had a clearly first position. This position of being first in the community was perhaps endangered by the merger. So that you are going to get considerable activity which is quite competitive, perhaps intensely competitive until a new equilibrium point has been established.

* * * * * * *

[fol. 3715] A. For the large firm to do what the small firm is doing involves rocking the boat again, and you upset the equilibrium and from the large firm's point of view it has nothing to gain, because if it cut price, then the other large firms will retaliate, and everybody loses.

So this is the kind of behavior that would be expected, and it is quite possible. It also serves the community because the community has an effectively competing small firm. In this case, not so small, a medium-sized bank, operating as an independent decision-making unit, willing to take certain steps that the other banks are neither perhaps willing nor able to take.

I think the best example of that was in the consumer financing, the direct advertising of information that we [fol. 3716] give loans direct rather than loans through the dealers. Another example might be in the mortgage field, where I guess Nashville Bank and Trust Company was very active in the mortgage market. This kind of activity serves the convenience and needs.

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[fol. 3717] A. I went from that to try and bring out the convenience and needs question, because I think again in this particular instance it is an example of where the convenience and needs—or let me put it this way; the effect of the merger had a negative effect on the convenience and needs of the community to the extent that the convenience and needs of the community were being served by this one-way street kind of competition. Then the merger has eliminated that competitor.

In other words, the particular actions which this small [fol. 3718] bank or medium-sized bank, the particular actions that that bank was taking to capture business away from the larger bank is now not being taken by any bank or will not be taken after this situation is stabilized.

So there has been no service to the convenience and needs in this respect.

There are several other angles to the convenience and needs which maybe I will speak of in a very specific way, rather than in the general case. The mortgage business was one.

NB&T was very active in the mortgage business. I be-

lieve the record bears this out. This has been dropped—or not dropped, but this particular activity has been foreclosed.

NB&T was very active in automobile financing to the individual automobile buyer rather than floor-planning. This particular aspect of it is gone. Just the fact that an alternative has been eliminated by the merger—there was testimony from a couple of businessmen who had been turned down by the larger banks—or bank in one case—for loans.

* * * * * * *

[fols. 3719-3730] Sometimes in talking about convenience and needs, I think there seems to be a distinction between private and public gains here. Certainly by the convenience and needs of Third National Bank's stockholders were served by the merger. Maybe the convenience and needs of some of the large borrowers of Third National Bank were served by the merger.

But the convenience and needs of the community, as I would like to see the community defined and as I think is the only sensible definition of the community under the new Act—well, they are just not served.

* * * * * * *

Cross-examination.

By Mr. Farris:

* * * * * * *

[fol. 3731] Q. Now, Professor Patterson, you have stated that the larger customers had alternatives to bank elsewhere. Well, let's assume that the larger customers here did go to New York and Chicago and receive their loans.

A. All right, sir.

Q. And let's assume that they paid interest to banks in New York and Chicago.

A. Yes, sir.

Q. Instead of paying that interest to a local bank.

A. Yes, sir.

Q. Does not that concentrate the money market in the [fol. 3732-3737] large cities of the north and east?

A. I'm glad you brought that up. I wanted to get to this question after I read Dr. Pugh's testimony.

The money market in this country is the closest approximation we have, I think, to a prefectly competitive market. Money flows where the profit is to be made on its investment. The fact that we have a concentrated money market center in New York City merely facilitates this flow of money. Every country, every major country has a major financial center. It's hard to imagine a situation where we would have an effectively operating system of capital flow where we did not funnel it through one or two major centers.

* * * * * * *

[fol. 3738] Q. Now, Professor Patterson, you said that this increase in competition which occurred immediately prior to and after the merger was in your opinion temporary.

[fol. 3739] A. Yes, sir.

Q. Now are you familiar with the degree of competition in this market which has historically existed prior to the merger?

A. Well, I have seen—I have read several times that this Nashville is one of the most competitive banking markets. These are nice statements to read; I would like to see some kind of comparative evidence on that, evidence on such matters is very difficult to get because of different money market conditions in different regions, and I would not accept a banker's contention or anyone else's verbal contention. It may or may not be true, I don't know.

It would depend on evidence, comparable rates with other areas, Memphis for instance, which I have heard of as an extremely competitive, aggressive area. Now how does this area compare with Memphis? Then we might be able to make something of it.

Q. Well, if service charges on bank accounts in the Nashville market tended to be among the lowest of a group of southern cities studied, would that indicate the degree of competition to any extent?

A. That might have some indication, certainly. Certainly.

Q. Now then assuming for the sake of argument, that the historical competitiveness of the Nashville market is es-[fol. 3740] tablished, by concrete evidence, then do you have any reason to assume that—and then let's assume further your testimony that this competition has been temporarily increased and intensified.

A. This is in the evidence from Mr. Fleming, isn't it?

Q. Do you have any reason to assume that there's going to be any lack of competitive behavior in the future?

A. Yes, sir, as an economist, I would testify that it is highly likely that the reduction of the number of important alternatives, banking alternatives, will reduce competition, and it's—you have an oligopoly situation with three large firms dominating the market now much more so than they were before.

You have eliminated an effective competitor in some areas, and a firm that had perhaps a very high probability of becoming a much stronger competitor in the future, especially as it was taken over by a new and more aggressive management, and to that extent, I would say that competition will be less in the future than it has been in the past.

Q. And you assume it was taken over by a new and aggressive management, don't you?

A. Well, suppose it were not taken over by new and aggressive management, suppose it was taken over by management similar to that which it had. We have neither [fol. 3741] lost nor have we gained, isn't that correct?

Q. Your assumption then is based simply on the counting of numbers in the competitive picture?

A. No, sir, I did not base it on simply counting of numbers. I said the counting of numbers is a strong indication, especially when you go from four to three, that's fairly important. But not just the counting of numbers.

It's conceivable that you could have an extremely competitive market with less than four, with three perhaps, but it's not considered to be very likely in the theory of the behavior of business competitors.

Q. And you say it's not considered to be likely despite the historical record?

A. The historical record, first of all—are you still saying for the purposes of argument that the historical record has

been established? I have not seen any figures to show that the Nashville market is more competitive than——

Q. We'll rest on that point that the record adequately shows it. Let's assume——

A. If that's the case, then you have to say, aren't you in danger of extropolating this? I mean this may or may not occur in the future.

Q. Then you said just now it was highly likely. Now I want to know whether it's highly likely that——

A. I said as an economist on the number——

[fol. 3742] Mr. Minicus: Objection, Your Honor, this is based entirely upon the assumption that Mr. Farris is making from the record that we contradict.

We have argued from the beginning and put in evidence time and time again that this market was highly concentrated before the merger, is much more concentrated after the merger, and out of that high degree of concentration, how Mr. Farris can confront the witness with a statement that the record uncontrovertibly shows that this market was aggressive is beyond me. I think that's one of the most contested facts in the record.

The Court: It is a disputed fact, but there is evidence in the record that this is a highly-competitive market, and was such before the merger. I think he can be examined on that hypothesis.

Mr. Minicus: On the hypothesis, I wouldn't object to that.

The Witness: Would you phrase your question again?

By Mr. Farris:

Q. I say assume that we are able to show that and we insist that the record will show it, and that's a matter for the Court to decide whether we have or have not, but let's assume that we have.

[fol. 3743] A. Right.

Q. Now I'm asking you this, is there any better way to judge the future than by the past?

A. Well——.

Q. With respect to this competitive picture?

A. Yes, I think there is. Especially in a case where we have a long history of study by a lot of economists as to

oligopoly behavior. There have been a lot of facts gathered on this over the years.

The indication is that when you reduce the number of competitors down below a certain level, you will tend to reduce the number of—the degree of competition.

Now you want to argue that this has been a competitive market, and for some reason we have established certain forces within this economy that will guarantee it to continue as a competitive market.

Q. I haven't argued that anything is guaranteed.

A. If something continues for a long period of time, then in order for you to say that it is going to continue on into the future, you must be implicitly arguing that there are basic forces which guarantee that this will happen. This just doesn't happen because of custom.

People don't compete because of custom. They compete for certain reasons, and so what you are saying is that you want me to say that this will continue in the future.

[fols. 3744-3751] I say it will continue in the future so long as whatever forces have guaranteed the competition up to now, assuming it has existed, continue in the future, and I don't know what those forces are.

* * * * * * *

[fol. 3752] By Mr. O'Malley:

Q. Now, when we get to oligopoly behavior let me ask [fols. 3753-3754] you this. Do you concede that oligopoly behavior is an economic theory and that there is a substantial difference of opinion among economists on the subject?

A. Well, there are many aspects of oligopoly behavior. On many of these aspects there is considerable disagreement, yes.

* * * * * * *

[fols. 3755-3780] Q. Mr. Weaver was not a manager. Are you suggesting that you can force Mr. Weaver or anybody else in this country to hold onto his stock?

A. No, sir, he can sell his stock. I imagine that in this

community or in other communities there would have been people who would have come forward to buy his stock.

All I am saying is that we can prevent Mr. Weaver from selling the stock of his group—that is, I hope we can prevent it—to the Third National Bank.

Q. Is it your contention that absentee ownership of a bank is better than local ownership?

A. I am not quite sure that it is going to make much difference. I think a good many of the banks, I would prefer local ownership. But I don't know what per cent of the banks are owned by local as opposed to absentee ownership. Absentee ownership is a kind of a nasty word.

* * * * * * *

In United States District Court

Plaintiff's Exhibit No. 3

William C. Weaver, Jr.
Nashville, Tennessee

January 11, 1964.

Mr. H. G. Hill, Jr.
Nashville Bank and Trust Co.
315 Union Street
Nashville, Tennessee

Mr. W. S. Hackworth
Nashville Bank and Trust Co.
315 Union Street
Nashville, Tennessee

Dear Messrs. Hill and Hackworth:

This letter will confirm the oral agreement made between us in your office on Friday, January 10, 1964 regarding the purchase by me of 10,845 shares of capital stock of Nashville Bank and Trust Company (hereinafter called the Bank) as follows:

9,845 shares from H. G. Hill Company, and
1,000 shares from W. S. Hackworth

for a price of Three Hundred Fifty ($350) Dollars per share.

This purchase will be consummated on a closing date selected by me but in no event later than April 10, 1964. On the closing date, payment of the purchase price will be made in cash against delivery to me, free and clear of all encumbrances, of certificates duly endorsed for transfer, with all necessary Federal stock transfer tax stamps attached, in the aggregate of the 10,845 shares to be purchased.

Each seller shall furnish me an opinion of counsel in form and substance satisfactory to me and dated as of the closing date:

(1) that the Bank is a validly existing Tennessee corporation in good standing and is authorized to carry on its business as it is then being carried on;

(2) that the shares being sold were validly issued and are fully paid and nonassessable;
(3) that he has valid legal title to said shares and has executed valid and binding instruments of transfer of said shares; and
(4) as to such other legal matters relating to this transaction as I may reasonably request.

In connection with this purchase, I agree that:

(1) promptly after the date both of you sign this letter, I will offer to purchase from each other stockholder of record of the Bank all the shares of capital stock then registered in his name, said offer to be open for thirty (30) days from its date and, if accepted, said shares to be purchased for cash on the closing date in the same manner as the purchase of the shares from you;
(2) within a reasonable time after the closing date, I will cause the Bank to establish an advance funded pension plan qualified pursuant to the Internal Revenue Code of 1954 providing substantially the same benefits for employees of the Bank as are now provided by the existing pension plan adopted October 26, 1961, but with the following liberalizations:
   (a) providing early retirement benefits at age 55 for the actuarial equivalent of the benefits at age 65 (this is the same basic provision in the present plan at The National Life); and
   (b) eliminating the restriction against employment by a competitor of the Bank after retirement.

In connection with this purchase, H. G. Hill, Jr. agrees that:

(1) he will cause H. G. Hill Company to take whatever corporate action is necessary to carry out this agreement and to complete this purchase;
(2) he will retain, and will advise each other member of his family to retain, all shares of stock of the Bank owned by him following consummation of this purchase; and
(3) he will continue after the closing date to use his best efforts ~~to promote and secure the progress and~~

~~success of the Bank and~~ to cause H. G. Hill Company and members of his family to continue to do business with the Bank.

In connection with this purchase, W. S. Hackworth agrees that:

(1) he will retain the balance of the shares of stock of the Bank owned by him following consummation of this purchase; for at least as long as he is an officer of the bank.
(2) he will continue after the closing date to use his best efforts to promote and secure the progress and success of the Bank and will also offer to continue as an executive officer of the Bank for two years following said closing date.

This agreement shall be binding upon, and inure to the benefit of, the respective legal representatives and assigns of each of us.

If this letter correctly sets out our oral agreement, I shall appreciate each of you signing the first carbon of it and returning said carbon to me. A signed copy of said letter is enclosed for each of you.

Yours very truly, William C. Weaver, Jr.

Accepted this 14th day of January, 1964.

H. G. Hill, Jr.

Accepted this 14th day of Jan., 1964.

W. S. Hackworth.

TRANSCRIPT
OF
RECORD

Volume III

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 86

UNITED STATES, APPELLANT,

vs.

THIRD NATIONAL BANK IN NASHVILLE, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

FILED APRIL 11, 1967

PROBABLE JURISDICTION NOTED JUNE 12, 1967

(Pages 929 to 1186)

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Volume III

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In United States District Court

Plaintiff's Exhibit No. 4

Directors' Joint Committee
Third National Bank in Nashville
Nashville, Tennessee

Gentlemen:

The following two paragraphs are quoted from the merger agreement dated March 12, 1964:

"6. Neither of the Banks shall declare nor pay any dividend to their shareholders between the date of this agreement and the time at which the merger shall become effective and neither shall dispose of any of its assets nor incur any liabilities in any other manner except in the normal course of business and for adequate value between the date of this agreement and the effective date of the merger. However, customary dividends by Third National Bank at the rate of $.25 per share each calendar quarter and by the Nashville Bank and Trust Company at the rate of $1.50 per share each calendar quarter may be declared and paid.

A committee of six, three to be appointed by the Board of Directors of each Bank at the effective time of the merger, shall have satisfied themselves that the statement of condition of each Bank as of March 11, 1964 fairly presents its financial condition and that since such date there have been no material adverse changes in the financial condition or business of either Bank.

8a. Third National Bank shall contribute to the Association acceptable assets having a book value, over and above its liability to its creditors, of at least $22,342,225.17, and having an estimated fair value, over and above its liability to its creditors, of at least $33,395,518.33, or 86.25% of the estimated fair value of excess acceptable assets, over and above liabilities to creditors, of the resulting Bank, adjusted, however, for normal earnings and expenses between March 11, 1964, and the effective time of the merger, and, for

allowances of cash payments, if any, permitted under this agreement.

The difference between the book value and the estimated fair value of assets to be contributed by Third National Bank is made up as follows:

Reserve for Bad Debts	2,776,979.04
Tax Paid Reserve for Bad Debts	4,683,572.83
Write-down on fixed assets in excess of tax base	1,678,497.05
Reserve for Interest Collected—Not Earned	6,605,467.52
Adjusted Income Taxes on Reserve	(4,691,223.28)
	11,053,293.16

At the effective time of the merger Nashville Bank and Trust Company shall have on hand acceptable assets having a book value of at least $4,540,072.15, over and above its liability to its creditors, and having a fair value, over and above its liability to its creditors, of at least $5,322,070.49 or 13.75% of the estimated fair value of excess acceptable assets, over and above liabilities to creditors, of the resulting Bank, adjusted, however, for normal earnings and expense between March 11, 1964, and the effective time of the merger, and for allowance of cash payments, if any, permitted under this agreement.

The difference between the book and fair value of excess acceptable assets, as set forth above, is made up as follows:

Reserve for Bad Debts	1,188,524.52
Write-down on fixed assets in excess of tax base	33,750.00
Reserve for Interest Collected—Not Earned	307,972.19
Adjusted Income Taxes on Reserve	(748,248.37)
	781.998.34

Statements of condition of both banks as of March 11, 1964, the date in the merger agreement, and as of August 18, 1964, the date of the merger, are attached hereto. These statements show that the Nashville Bank and Trust Company had on hand acceptable assets with a book value, over and above its liability to creditors, of $4,540,072.15 on March 11, 1964 and $4,700,197.86 on August 17, 1964 and with a fair value, over and above its liability to creditors, of $5,322,070.49 on March 11, 1964 and $5,448,435.59 on August 18, 1964. The statement also shows that the Third National Bank had on hand acceptable assets with

a book value, over and above its liability to creditors, of $22,342,225.17 on March 11, 1964 and $23,258,547.29 on August 18, 1964 and with a fair value, over and above its liability to creditors, of $33,395,518.33 on March 18, 1964 and $34,-835,163.37 on August 18, 1964.

The Auditing Department under my direction and supervision completed an audit of the Third National Bank as of April 30, 1964 and the Banking Department of the Nashville Bank and Trust Company as of September 17, 1964. It is my opinion, based on my examination, that the statements of condition of each bank fairly presents the financial condition on that date.

Respectfully submitted, Carson Carlisle, Vice President and Auditor.

CC:bc

Statement of Condition

Third National Bank in Nashville

Assets	March 11, 1964	August 18, 1964
Cash and Due From Banks	64,891,670.22	91,588,573.24
U. S. Government Securities	49,696,520.48	39,489,703.80
Federal Funds Sold	—	10,000,000.00
State, County and Municipal Bonds	32,238,664.83	34,956,641.18
Other Securities	769,008.19	1,077,608.19
Loans and Discounts	188,228,556.89	206,506,751.82
Bank Buildings	3,420,521.04	3,541,981.43
Furniture and Fixtures	487,045.10	470,653.91
Other Real Estate	12,001.00	44,573.58
Income Earned—Uncollected	807,021.10	1,623,676.54
Customers Liability—Letters of Credit	921,650.48	1,339,767.64
Other Assets	228,729.81	196,930.61
	341,701,389.14	390,836,861.94

Liabilities		
Capital	6,000,000.00	6,000,000.00
Surplus	14,000,000.00	14,000,000.00
Undivided Profits	2,342,225.17	3,258,547.29
Reserve for Taxes and Interest	3,592,530.63	3,551,508.82
Letters of Credit	921,650.48	1,339,767.64
Income Collected—Unearned	6,605,467.52	7,055,270.55
Reserve for Bad Debts	2,776,979.04	3,087,098.96
Tax Paid Reserve for Bad Debts	4,683,572.83	4,288,030.41
Deposits	300,778,963.47	348,256,638.27
	341,701,389.14	390,836,861.94

Reconciliation of Book and Estimated Fair Value

Capital	6,000,000.00	6,000,000.00
Surplus	14,000,000.00	14,000,000.00
Undivided Profits	2,342,225.17	3,258,547.29
Book Value	22,342,225.17	23,258,547.29
Reserve for Bad Debts	2,776,979.04	3,087,098.96
Tax Paid Reserve for Bad Debts	4,683,572.83	4,826,934.28
Write-down on Fixed Assets in Excess of Tax Base	1,678,497.05	1,678,497.05
Reserve for Interest Collected—Not Earned	6,605,467.52	7,055,270.55
Adjusted Income Taxes on Reserve	(4,691,223.28)	(5,071,184.76)
Estimated Fair Value	33,395,518.33	34,835,163.37

Statement of Condition

Nashville Bank and Trust Company

Assets	March 11, 1964	August 18, 1964
Cash and Due From Banks	5,419,136.85	5,969,960.61
U. S. Government Securities	10,147,519.33	12,019,298.67
State, County, and Municipal Bonds	5,613,850.61	5,624,606.19
Other Securities	249,541.20	249,540.43
Loans and Discounts	22,768,745.42	23,644,094.01
Bank Building	1,449,916.10	1,465,700.69
Furniture and Fixtures	53,294.99	15,065.14
Income Earned—Uncollected	139,652.24	113,232.38
Customers Liability—Letters of Credit	52,140.00	7,383.75
	45,893,796.74	49,108,881.87

Liabilities		
Capital	1,633,300.00	1,633,300.00
Surplus	1,700,000.00	1,700,000.00
Undivided Profits	1,030,771.03	1,190,896.74
Reserve for Contingencies	176,001.12	176,001.12
Reserve for Taxes and Interest	151,606.29	517,500.64
Letters of Credit	52,140.00	7,383.75
Income Collected—Unearned	307,972.19	301,494.12
Reserve for Bad Debts	1,188,524.52	1,127,380.33
Total Demand Deposits	21,454,592.26	23,660,538.65
Total Time and Savings Deposits	18,198,889.33	18,794,386.52
	45,893,796.74	49,108,881.87

Reconciliation of Book and Estimated Fair Value

Capital	1,633,300.00	1,633,300.00
Surplus	1,700,000.00	1,700,000.00
Undivided Profits	1,030,771.03	1,190,896.74
Reserve for Contingencies	176,001.12	176,001.12
Book Value	4,540,072.15	4,700,197.86
Reserve for Bad Debts	1,188,524.52	1,127,380.33
Write-down on Fixed Assets in Excess of Tax Base	33,750.00	33,750.00
Reserve for Interest Collected—Not Earned	307,972.19	301,494.12
Adjusted Income Taxes on Reserve	(748,248.37)	(714,386.72)
Estimated Fair Value	5,322,070.49	5,448,435.59

In United States District Court

Plaintiff's Exhibit No. 26

18. List the names and addresses of all persons who discussed with W. S. Hackworth or any other officer or director of N B & T at any time during the period January 1, 1960 through January 14, 1964 the purchase of a controlling interest in N B & T by merger. State the date of each such discussion.

Answer: Messrs. W. S. Hackworth and H. G. Hill, Jr., President and Chairman of the Board of N B & T are believed to be the only officers or directors with whom such a discussion is likely to have occurred. This is because approximately 70% of the stock of N B & T was in their hands and conversations with others would have been useless. The only persons with whom serious discussions occurred were Mr. William Weaver and Mr. Edwin W. Craig, whose addresses are as follows:

c/o National Life and Accident Insurance Company
301 Seventh Avenue, North
Nashville, Tennessee

These discussions took place during the fall of the year in 1963 and during the first part of January, 1964 as indicated by the depositions of Mr. Weaver and Mr. Hill, but merger was not discussed prior to January 14, 1964.

Concerning other discussions, to the best of Mr. Hackworth's recollection, since no records were kept, at some time during the last three or four years a conversation took place between Mr. Hackworth and Mr. Ralph Owen, President of Equitable Securities Corporation, Union Street, Nashville, Tennessee and Mr. Owen indicated that his company was in the brokerage business and that he would, if the opportunity ever arose, like to arrange to sell the stock of the Trust Company. However, this conversation was more or less casual and nothing ever came of it.

Also, sometime during the last three or four years, another casual conversation occurred when Mr. Parkes

Armistead, Chairman of the Board, First American National Bank, Union Street, Nashville, Tennessee, approached Mr. Hackworth and said to him that if the time ever came when the Nashville Bank and Trust Company would be interested in a merger with First American National Bank that he would be interested in discussing it. However, there was no follow-up to this opening of the subject.

Please also refer to deposition of Mr. Hill dated October 20, 1964.

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT NO. 27

Interrogatory No. 8. State the amount of reserve for loan losses of Third National and N B & T, respectively, as of December 31, 1962 and December 20, 1963.

a. State the amount charged off to loan losses by each of said banks for each of the years 1962 and 1963.

Answer to Interrogatory No. 8.

8. Reserve for Loan Losses

	12/31/62	12/20/63
Third National	2,447,156.45	2,751,244.55
Nashville Bank and Trust	1,048,951.15	1,014,422.65

8a. Amount charged-off to loan losses

	1962	1963
Third National	334,777.66	376,660.79
Nashville Bank and Trust	83,975.31	60,649.11

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT NO. 72

Interrogatory No. 9. With regard to trust department activities at N B & T specify: (1) total number of fiduciary accounts; (2) total trust asset value; and (3) annual or semiannual trust department gross revenues, together with net proceeds before taxes, as of December 31, 1961, 1962, and 1963, and June 30, 1964; supply the identical data at the same dates for Third National, but include December 31, 1964.

Answer to Interrogatory No. 9.

9A. Regarding Trust Department activities at Third National Bank:

	12/31/61	12/31/62	12/31/63	6/30/64	12/31/64
(1) Total Number Fiduciary Accounts (Note 1)	725	751	854	884	1,920
(2) Total Trust Asset Value (Note 1)	$76,903,864	$82,482,982	$83,169,706	$98,688,204	$188,785,926
(3) Gross Revenues	$ 263,715	$ 295,684	$ 331,121	(Note 2)	$ 508,303
(4) Net Proceeds Before Taxes	$ 4,847	$ 18,238	$ 28,134	(Note 2)	$ 93,155

B. Regarding Trust Department activities at Nashville Bank & Trust Company:

	12/31/61	12/31/62	12/31/63	6/30/64	12/31/64
(1) Total Number Fiduciary Accounts (Note 1)	936	962	986	999	—
(2) Total Trust Asset Value (Note 1)	$75,557,596	$79,212,218	$81,362,203	$83,460,232	—
(3) Gross Revenues	$ 239,286	$ 255,533	$ 264,946	$ 135,000	—
(4) Net Proceeds Before Taxes	$ 31,902	$ 45,983	$ 50,976	$ 21,358	—

Note 1: Figures include common trust funds administered which represents some duplication of assets. Total trust asset values are stated at book or carrying values rather than at market value in accordance with standard trust department procedures.

Note 2: June 30, 1964 figures not available for Third National.

In United States District Court

Plaintiff's Exhibit No. 73

Interrogatory No. 10. For each classification of trust department accounts, as set forth below, specify: (1) the number of accounts; and (2) asset values, as of December 31, 1963 and June 30, 1964 for Third National and N B & T; also for December 31, 1964 at Third National, as follows:

	Number	Value
(1) Personal Accounts Administered—		
(a) Trusts		
(b) Agency, escrow, and custodian		
(2) Corporate Accounts Administered		
(a) Bond or debenture issues		
(b) Paying agencies		
(c) Depositories and other corporate accounts		
(3) Transfer Agency Accounts		
(4) Registrar Accounts		
(5) Common Trust Funds		

Answer to Interrogatory No. 10.

10.

Third National Bank

Type Trust Department Account	December 31, 1963 Number	December 31, 1963 Asset Value	June 30, 1964 Number	June 30, 1964 Asset Value	December 31, 1964 Number	December 31, 1964 Asset Value
(1) Personal Accounts Administered						
(a) Trusts	589	48,945,540	615	53,878,408	1,443	98,628,251
(b) Agency, Escrow and Custodian	117	14,111,052	119	16,996,941	265	27,648,133
(2) Corporate Accounts Administered						
(a) Bond or Debenture Issues	58	12,271,885	51	20,150,059	71	20,009,413
(b) Paying Agencies	33	93,521	36	78,702	38	207,061
(c) Depositories and Other Corporate Accounts	51	7,348,890	56	7,108,759	81	37,465,630
(3) Transfer Agency Accounts	4	-0-	5	-0-	14	-0-
(4) Registrar Accounts	1	-0-	1	-0-	5	-0-
(5) Common Trust Funds	1	398,818	1	475,335	3	4,827,438

Note: Values shown are at book or carrying value rather than market value, in accordance with standard trust department procedures.

Answer to Interrogatory No. 10 continued (with regard to Nashville Bank and Trust Company).

10.

Nashville Bank & Trust Company

Type Trust Department Account	December 31, 1963 Number	Asset Value	June 30, 1964 Number	Asset Value
(1) Personal Accounts Administered				
(a) Trusts	798	39,032,638	806	41,320,141
(b) Agency, Escrow and Custodian	135	10,272,499	136	8,356,116
(2) Corporate Accounts Administered				
(a) Bond or Debenture Issues	14	232,839	17	222,663
(b) Paying Agencies	0	0	1	65,348
(c) Depositories and Other Corporate Accounts	25	27,648,136	25	29,232,043
(3) Transfer Agency Accounts	7	—	7	—
(4) Registrar Accounts	5	—	5	—
(5) Common Trust Funds	2	4,176,091	2	4,263,921

Note: Values shown are at book or carrying value rather than market value, in accordance with standard trust department procedures.

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 74

Interrogatory No. 12. State the date of opening, type, and total asset value of each trust department account of N B & T opened subsequent to January 1, 1963.

Answer to Interrogatory No. 12.

12. Listed below are the dates of opening, type and total asset value of each trust department account of Nashville Bank and Trust opened subsequent to January 1, 1963 and prior to August 18, 1964:

Date	Type of Account	Asset Value
1-8-63	Escrow Agent	6,000.00
1-22-63	Guardian	441.66
1-24-63	Guardian	2,127.98
1-28-63	Estate	29,670.09
2-6-63	Estate	4,580.90
2-13-63	Guardian	44.44
2-13-63	Estate	109,158.13
2-20-63	Estate	71,955.01
2-20-63	Estate	24.00
2-27-63	Guardian	53.71
2-27-63	Guardian	53.71
2-27-63	Guardian	53.73
2-27-63	Guardian	53.73
3-1-63	Estate	58,010.02
3-8-63	Guardian	963.67
3-13-63	Guardian	263.54
3-31-63	Guardian	263.64
3-13-63	Guardian	263.64
3-18-63	Guardian	369.28
3-18-63	Guardian	369.28
3-18-63	Guardian	369.28
3-22-63	Guardian	9,221.34
3-27-63	Guardian	705.75
3-27-63	Guardian	705.75
3-27-63	Guardian	705.75
3-27-63	Guardian	705.75
3-27-63	Personal Trust	27,451.20
3-28-63	Personal Trust	22,128.00
4-1-63	Guardian	25.00
4-1-63	Guardian	25.00
4-3-63	Personal Trust	76,977.13
4-3-63	Personal Trust	76,596.18
4-3-63	Personal Trust	1,000.00
4-4-63	Guardian	44.45
4-4-63	Guardian	44.45
4-4-63	Guardian	44.45
4-4-63	Guardian	44.45
4-4-63	Guardian	44.44

Date	Type of Account	Asset Value
4-4-63	Guardian	44.44
4-4-63	Guardian	44.44
4-4-63	Guardian	44.44
4-4-63	Guardian	44.44
4-8-63	Personal Trust	120,498.77
4-16-63	Estate	8,156.19
4-19-63	Personal Trust	24,054.11
4-22-63	Guardian	162.46
4-22-63	Guardian	162.46
4-25-63	Conservator	13,484.25
5-2-63	Conservator	11,001.72
5-3-63	Guardian	2,989.50
5-7-63	Estate	2,104.03
5-24-63	Personal Trust	161,757.09
5-24-63	Guardian	1,590.88
5-31-63	Guardian	250.53
6-7-63	Personal Trust	19,069.19
6-20-63	Guardian	21,940.08
6-27-63	Estate	24,351.08
7-2-63	Personal Trust	138,759.39
7-10-63	Personal Trust	1,889.26
7-11-63	Estate	13,451.85
7-17-63	Guardian	562.00
7-23-63	Guardian	684.71
8-15-63	Guardian	1,652.68
9-13-63	Personal Trust	11,828.79
9-13-63	Guardian	396.90
9-19-63	Guardian	115.24
9-19-63	Guardian	115.24
9-23-63	Escrow Agent	100,000.00
9-30-63	Guardian	491.54
9-30-63	Guardian	491.54
10-10-63	Guardian	10,112.00
10-24-63	Guardian	51.75
10-24-63	Guardian	12,997.32
10-28-63	Guardian	3,782.18
10-30-63	Estate	443,976.97
10-31-63	Guardian	138.27
11-5-63	Guardian	4,741.94
11-8-63	Guardian	2,433.94
11-12-63	Guardian	4,170.23
11-19-63	Estate	723,421.94
11-20-63	Guardian	886.17
11-25-63	Personal Trust	544.50
11-27-63	Guardian	36.72
12-4-63	Personal Trust	6,299.97
12-4-63	Escrow Agent	29,175.04
12-6-63	Guardian	304.83
12-6-63	Guardian	811.43
12-17-63	Guardian	392.00
12-20-63	Guardian	95.00
12-20-63	Guardian	95.00
12-20-63	Guardian	95.00
12-20-63	Guardian	95.00
12-20-63	Guardian	95.00
1-8-64	Conservator	100.00
1-15-64	Estate	121,644.81
1-15-64	Estate	2,910.13
1-21-64	Estate	27,083.27
1-21-64	Personal Trust	23,817.36
1-21-64	Personal Trust	23,817.36

Date	Type of Account	Asset Value
1-21-64	Personal Trust	23,817.36
1-23-64	Estate	469,613.59
1-30-64	Guardian	500.00
2-4-64	Guardian	1,424.00
2-17-64	Estate	678,291.18
2-17-64	Guardian	1,034.17
2-18-64	Estate	15,441.01
2-25-64	Guardian	867.50
2-27-64	Guardian	1,711.18
3-9-64	Guardian	394.33
3-11-64	Guardian	465.00
3-13-64	Estate	31,449.30
3-24-64	Guardian	3,099.06
3-25-64	Estate	4,349.28
3-25-64	Estate	198,667.00
3-26-64	Estate	63,842.97
4-8-64	Personal Trust	403.12
4-14-64	Estate	167,848.70
4-14-64	Personal Trust	403.12
4-17-64	Estate	10,354.39
4-21-64	Personal Trust	12,436.70
4-22-64	Guardian	244.49
4-27-64	Estate	40,692.92
5-8-64	Guardian	388.35
5-13-64	Estate	21,911.21
5-14-64	Guardian	3,495.46
5-26-64	Estate	48,624.07
6-4-64	Guardian	255.00
6-5-64	Estate	72,731.48
6-17-64	Conservator	903.74
6-18-64	Guardian	1,142.12
6-29-64	Guardian	100.17
6-30-64	Estate	187,951.87
7-7-64	Personal Trust	50,000.00
7-17-64	Estate	628,903.05
7-17-64	Estate	69,756.42
7-21-64	Bond Trustee	134,000.00
7-24-64	Bond Trustee	1,000,000.00
7-27-64	Estate	6,279.42
8-3-64	Personal Trust	52,612.50
8-7-64	Personal Trust	7,023.61
8-12-64	Guardian	204.00
8-13-64	Estate	624.00
8-13-64	Estate	4,955.62
8-17-64	Personal Trust	1,865.00
2-15-63	Personal Agency	24,499.81
4-3-63	Personal Agency	6,545.50
4-19-63	Estate Agency	22,834.11
7-5-63	Estate Agency	332,943.10
9-13-63	Personal Agency	45,000.00
9-24-63	Personal Agency	57,930.98
10-15-63	Personal Agency	561,000.00
10-19-63	Estate Agency	3,603.84
12-18-63	Personal Agency	15,423.75
12-18-63	Personal Agency	15,290.62
12-18-63	Personal Agency	15,423.75
12-18-63	Personal Agency	15,203.92
12-18-63	Personal Agency	15,423.75
4-4-63	Estate Agency	2,739.96
4-11-63	Personal Agency	3,999.75

Date	Type of Account	Asset Value
7-17-63	Personal Agency	9,323.49
2-7-64	Stock Transfer Agent	
3-4-64	Personal Agency	14,973.60
4-1-64	Guardian Agency	40,274.52
5-4-64	Guardian Agency	96,736.00
5-31-64	Bond Paying Agent	3,490,000.00
6-30-64	Personal Agent	75,674.80
7-3-64	Personal Agent	1,457.57
7-5-64	Personal Agent	164.54

Note: Values given are carrying values which are stated at book or market depending on type of account.

In United States District Court

Plaintiff's Exhibit No. 79

The National Life and Accident Insurance Company
National Building
Nashville 3, Tennessee

William C. Weaver, Jr.
Financial Vice-President

June 15, 1964.

Mr. Sam M. Fleming
President
Third National Bank
Nashville, Tennessee

Dear Sam:

In accordance with your request, I wish to give you the background of the negotiations and the intentions of our group which purchased the controlling interest in the Nashville Bank and Trust Company from the H. G. Hill Company and W. S. Hackworth.

Mr. W. S. Hackworth, President of Nashville Bank and Trust Company, indicated to me that the H. G. Hill Company would consider selling their controlling interest in Nashville Bank and Trust Company consisting of 9,845 shares of capital stock out of the 16,333 shares outstanding. As I recall it, this first definite indication from Mr. Hackworth came in October of 1963. Subsequently, I had a meeting with Mr. H. G. Hill, Jr., President of H. G. Hill Company and Chairman of the Board of Nashville Bank and Trust Company, and Mr. Hackworth the latter part of November, 1963. I advised these gentlemen that I was interested in considering the purchase of the controlling interest in the Nashville Bank and Trust Company purely as an investment. We had a general discussion about the matter and found that each one of us was interested in pursuing the matter further. We agreed to meet for further discussions at some future date.

Mr. Hill explained to me that he was interested in selling the Hill Company stock in the Nashville Bank and Trust Company so as to use the proceeds of the sale to expand the retail store properties of his company. He also said

that he felt it necessary that his full time be devoted to the affairs of the H. G. Hill Company.

Because of out of town trips, the Christmas holidays, and other conflicts, I did not have another meeting with Mr. Hill and Mr. Hackworth until January 7, 1964 when we met in the Directors room at the Nashville Bank and Trust Company. I did see Mr. Hill and Mr. Hackworth on several social and business occasions and kept the negotiations active in this manner. At this January 7th meeting, I realized for the first time that Mr. Hill was really serious about selling the controlling interest in the Nashville Bank and Trust Company to me and my associates. He expressed confidence in me and my associates and stated that the Hill family felt assured that such a sale would leave the trustors, depositors, trust beneficiaries, employees and other stockholders of the Bank in strong and safe hands.

At the conclusion of our January 7th meeting, we agreed to meet again in a few days to discuss a definite price for the Nashville Bank and Trust Company stock and other terms and conditions of the proposed deal.

I had another meeting with Mr. Hill and Mr. Hackworth in the Directors room at the Bank the afternoon of Friday, January 10th. I asked Mr. Hill for an option on the H. G. Hill Company stock at $350 per share for a period of sixty to ninety days but he was unwilling to grant such an option. He indicated a willingness to sell the 9,845 shares held by the Hill Company at $350 per share and agreed orally to give me a reasonable period of time to purchase the stock on this basis. I thanked him for his offer and told him that my associates and I would endeavor to buy the Hill Company interest at $350 per share. Mr. Hackworth, at this same meeting, agreed to sell us 1,000 shares of his personal stock at $350 per share.

I worked over the following weekend and on Sunday afternoon, January 12th, I met with Mr. Hackworth and Mr. F. B. Young, Jr., Vice President, and head of the Banking Department of Nashville Bank and Trust Company, at their office. We spent most of the afternoon going over the financial and operating statements of the Bank with my attorney, Mr. Walter M. Robinson, Jr. That night Mr. Robinson and I drew up a letter to Mr. Hill as President of

the H. G. Hill Company and Mr. Hackworth, agreeing to purchase 9,845 shares from the Hill Company and 1,000 shares from Mr. Hackworth at $350 per share and also agreeing to make this same offer to all other stockholders of the Nashville Bank and Trust Company.

On Monday afternoon, January 13th, I met again with Messrs. Hill and Hackworth in the Directors room at the Bank, and the agreement we had drawn the previous evening was executed by the three of us with only a few minor changes. This letter was dated January 11, 1964 and the effective date of the acceptance by Mr. Hill and Mr. Hackworth was January 14, 1964.

You can easily see from the above timetable that this deal was consummated very quickly. Time did not permit either me or my associates to make a thorough study of future operating plans for the Bank. When we completed a survey of the situation, we immediately realized that there were a good many weaknesses and shortcomings which would make the expansion and development of the Bank most difficult. The most glaring weaknesses were:

(1) Management

Mr. H. G. Hill, Jr., Chairman of the Board, wished to retire to devote his full time to the H. G. Hill Company. Mr. W. S. Hackworth, President, was 68 years old and expressed a desire to retire within the next two years. The average age of the other officers was high and there were few capable young men coming along. The salaries of the officer group and of the employees were extremely low, so much so that capable young college graduates could not be attracted.

(2) Branch Banks

The Nashville Bank and Trust Company had only one small branch bank. When we investigated the possibility of establishing additional branches, we found that locations were very difficult to obtain and that the original cost plus the expense of maintaining the branch banks until they can become profitable was overwhelming. Also, the personnel of the Bank was totally inadequate to man a branch program.

(3) Bookkeeping and Accounting

We found that the Nashville Bank and Trust Company was not automated and had no computor. We also found that the cost of a computor was prohibitive for a bank this size.

(4) Pension Plan

We found that the Nashville Bank and Trust Company was operating under a pension plan adopted on October 26, 1961 and that the benefits to retired employees were being paid out of current earnings. The cost to fund this plan on an actuarially sound basis would be very expensive and would be a rather substantial charge against future earnings.

(5) Main Banking Office

The physical quarters needed remodeling and renovating, the cost of which would be quite expensive.

When I first met with Mr. Hill and Mr. Hackworth the latter part of November, 1963, Mr. Hill asked me if I was available to devote my full time to the affairs of the Bank. I told him that it would be impossible for me to leave The National Life and Accident Insurance Company or to devote any considerable time to outside ventures. I explained that all the members of my immediate family, including myself, had a very substantial stock interest in The National Life and that I could not consider such a move under any combination of circumstances. I stated further that I would be unable to serve on the Nashville Bank and Trust Company Board of Directors and that this would also apply to all my National Life associates.

I think I should also point out to you that none of my associates in the purchase of the controlling interest in the Nashville Bank and Trust Company is a banker. If the Bank were to be operated by our group, it would therefore have been necessary to hire outside professional management. We soon found, in talking with various bankers throughout the country, that qualified management, capable of solving the problems of the Bank, would have better opportunities elsewhere. While we had no merger plans

at the time we bought control of the Nashville Bank and Trust Company, it soon became apparent to us that a sound merger would be in the best interest of Nashville, the Bank and its customers.

After close analysis of all factors involved, it was our group's considered judgment that a merger with Third National Bank was feasible, and would best solve the many problems facing the Nashville Bank and Trust Company. In fact, in the light of the inability of the investor group to devote any substantial amount of time and thought to the Bank's operations, it would have been difficult in the extreme to resolve the Bank's management and operational problems without such a merger.

Sincerely, William C. Weaver, Jr.

WCW/ewm

In United States District Court

Plaintiff's Exhibit No. 478

Third National Bank
in Nashville

March 5, 1964.

Mr. William C. Weaver, Jr.
National Life and Accident Insurance Company
Nashville, Tennessee

Dear Bill:

Subject to the approval of our Board of Directors and stockholders, and provided approval can be obtained from the Comptroller of the Currency without intervention by either the Justice Department or the Federal Reserve Board, we make you the following offer:

We will exchange 4½ shares of Third National Bank stock for each share of Nashville Bank & Trust Company stock, with the understanding that the market value of 4½ shares of Third National Bank stock, one week after announcement of the proposed merger, be not less than $420.00 per share. If the market value should be less than that amount, the multiple of exchange would be increased so that the total number of shares exchanged would have a value of $420.00. If the proposed merger should be disapproved by the Comptroller, or if the Justice Department or Federal Reserve Board should successfully intervene to block the merger, the Third National Company would agree to pay $420.00 cash for all of the Nashville Bank & Trust Company stock.

This offer is good for thirty days from date, subject to the above limitations and, if satisfactory to you, I would appreciate your signing the enclosed copy of letter and returning it to me.

Very truly yours, Sam M. Fleming, President.

SMF:b

Approved subject to agreement of my associates, and by Directors and stockholders of Nashville Bank and Trust Co.

William C. Weaver, Jr.

March 11, 1964

In United States District Court

Plaintiff's Exhibit No. 483

The National Life and Accident Insurance Company
Nashville, Tennessee

William C. Weaver, Jr.
Financial Vice-President

March 19, 1964.

Mr. H. G. Hill, Jr.
H. G. Hill Company
500 Second Avenue North
Nashville, Tennessee

Dear Horace:

Thank you very much for sending me a copy of your thoughtful letter of March 16 to Sam Fleming. I appreciate very much your clarification of Albert Cason's story in the Nashville Tennessean of March 13.

I have always had a great admiration for you and your family. It dates back to the time when I was a little boy and was introduced to your father by my father. They were close friends. I remember quite well making a trip to Eddyville, Kentucky on the Cumberland River aboard the H.G. Hill steamer. Mr. Hill was along with many other prominent Nashvillians of that day, and it made quite an impression on me.

I also remember quite well when Mr. Hill bought the Nashville Trust Company during the depths of the depression in 1933. The people of this community will always owe him a great debt of gratitude because it had a very stabilizing influence on the Nashville banking situation. You and your family have continued to carry on the great tradition and fine name and reputation of the Trust Company during the more than thirty years that you have controlled its destiny. I can assure you that those of us who recently acquired the Hill Company interest have a full appreciation of the responsibility that is ours in properly looking after the trustors, depositors, trust beneficiaries, employees and stockholders.

You will recall that the first time I talked with you about purchasing the Hill Company interest in the Trust Company, you asked me if I was speculating or if I was in-

terested in making a long term investment. I told you that I was very much interested in a substantial bank interest and that I was not speculating. I want you to know that my views have not changed.

We are very enthusiastic, Horace, about the plans that are now being made to operate the Trust Company under the proposed merger plan with the Third National Bank. I personally feel that it will be a fine thing for Nashville and for everyone concerned. We need the assistance of you and your family in properly carrying out our plans, and I am confident and have the assurance of our Third National friends that the new operation will be worked out to the entire satisfaction of us all.

Unfortunately, during periods such as this, many unfounded rumors get wide spread circulation. As stated previously, I have made a long term investment and I am making arrangements to pay cash for the bulk of the 4,000 shares of Nashville Bank and Trust Company stock which I have purchased. My associates assure me that they are also in the deal for the long pull.

Assuring you of my high esteem and with best personal regards.

Sincerely yours, William C. Weaver, Jr.

WCW/ewm

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 497

ATTORNEY GENERAL

May 25, 1964.

Memorandum to
The Board of Review
and
The Board of Directors
Federal Deposit Insurance Corporation
Third National Bank in Nashville, Nashville, Tennessee

Subject: Request by the Comptroller of the Currency for Report on the Competitive Factors Involved in a Proposed Merger

Pursuant to the provisions of Section 18(c) of the Federal Deposit Insurance Act, the Comptroller of the Currency on April 28, 1964 requested from the Corporation a report on the competitive factors involved in the proposed merger of Nashville Bank and Trust Company, Nashville, Tennessee (Trust Company), a nonmember bank with total resources of $45,991,000, and the captioned bank (National), total resources $341,702,000, under the latter's charter and title. The main office and one branch of Trust Company will be continued as branches of National.

Recommendation of the Division of Examination:

It is recommended that this memorandum constitute the Corporation's report to the Comptroller of the Currency and that a copy of same be transmitted to him with a statement to the effect that consideration has been given to the elements of competition involved and, without regard to the banking factors, the Board of Directors has concluded that the effect of the proposed merger on competition would be unfavorable.

Summary and Conclusion

There are six commercial banks in Nashville, the State Capital, and only eight in Davidson County, of which Nashville is the County Seat, and which comprises the primary service area. Among the eight banks, National is second

largest, holding approximately one-third of the total bank deposits, as compared to nearly two-fifths held by the largest bank, and 4.7% by Trust Company. The latter ranks fourth among the six Nashville banks, as well as among the eight Davidson County banks. If the merger is consummated, based on December 1963 Call Report statistics, National would still rank second, holding 38.2% of bank deposits, but would be nearly the size of the largest bank which holds 39.4%. The two largest, combined, would hold 77.6% of the deposits and the three largest would hold 98%. Moreover, the three largest banks would be operating all but five of the 62 banking offices presently being operated by the eight banks competing in the area.

Trust Company is an important competitive factor among commercial banks in Nashville, although it operates only two offices. Its resources have grown more than 36% over the past five years. Moreover, its trust department and that of National are highly competitive among Nashville banks for trust business. Its main office is but one block from that of National and there is substantial competition between the two banks that would be eliminated as a result of the merger. In view of the foregoing statistics, the merger would further add to the concentration of banking resources in Nashville's two largest (as well as three largest) banks. Although the merger would tend to equalize, in size, the two largest, such equalization is not considered to outweigh the unfavorable factors of further concentration and the elimination of substantial competition.

It is concluded that the effect of the proposed merger on competition would be unfavorable.

Analysis of the Competitive Factor

Basic reasons advanced for the proposed merger are: (1) The expanding economy and influx of new industries in the area have increased the demand for large loans in the community, area, and region, and Trust Company's low loan limit places such business beyond its competitive reach; (2) Improved and more varied services would be available to the present customers of Trust Company; (3) The ownership of Trust Company lacks active banking experience and is faced with the problem of lack of management continuity;

(4) Trust Company is unable to effectively compete; and (5) The merger is justified because it will have a net "pro-competitive" effect.

National received its charter in 1927. It operates a sizeable trust department, holds approximately 365 correspondent bank accounts, and operates 14 branches throughout Nashville and Davidson County. Trust Company was organized in 1889, exercises trust powers, and operates one branch in Nashville. National has never been involved, throughout its history, in any merger type transactions; nor has Trust Company within the past thirty years.

The service area involved in this proposal insofar as the area from which the vast majority of IPC deposits are derived is considered to be confined primarily to Davidson County, inasmuch as neither of the merging banks has offices outside Davidson County. New branching outside the County in which a bank's main office is located was made illegal in Tennessee in 1925. Each of the counties surrounding Davidson County is served by independent banks and there is no evidence to indicate that these banks are failing to meet the needs of their respective areas. In fact, it is indicated that some of these banks are very aggressive.

Nashville, in addition to being the State Capital, is the county seat of Davidson County, which at the time of the 1960 census had a population of nearly 400,000. The population of Nashville was more than 170,000. The economy of the area is based primarily upon industry, which is well diversified; finance, involving insurance firms, banks, and securities dealers; and agriculture, although the latter is of declining importance. There are a number of educational institutions in the vicinity of Nashville and it lies within the Tennessee Valley Authority area, benefiting materially from the availability of low-cost power and labor. The last two factors have resulted in a substantial expansion of industry over the past few years. In addition, service establishments and defense spending are an important part of the Nashville economy. Using Davidson County as the primary service area involved in this proposal, the following banks are competitive: (Amounts in thousands, taken from the application, are as of December 20, 1963, except for Whites Creek Bank and Trust Company, which are as of December 31, 1963.)

Name of Bank	No. of Offices	Deposits Amount	%	Loans Amount	%	MO Distances From National
National	15	304,099	33.5	175,219	36.1	
Trust Company	2	42,024	4.7	22,377	4.6	1 block N
	17	346,123	38.2	197,596	40.7	
Nashville:						
First American National Bank of Nashville[1]	19	357,513	39.4	172,081	35.5	1 block N
Commerce Union Bank	21	185,871	20.5	105,098	21.7	1 block N
Capital City Bank of Nashville, Tennessee	2	5,763	.6	3,139	.6	½ block N
Citizens Savings Bank and Trust Company	1	2,988	.3	1,747	.4	3 blocks NW
Other Davidson County Banks:						
The Bank of Goodlettsville, Goodlettsville	1	5,884	.7	3,978	.8	14 miles N
Whites Creek Bank and Trust Company, Whites Creek	1	2,414	.3	1,260	.3	9 miles NW
	62	906,556	100.0	484,899	100.0	

[1] Does not include two approved but unopened branches that are under construction.

If the proposed merger is consummated, the two largest banks in Nashville, one of them the resultant bank in this case, would hold 77.6% of the deposits held among the banks in Davidson County; the three largest would hold more than 98%. These three banks would be operating all but five of the 62 banking offices now being operated by the eight banks. National's present position as the second largest bank in Nashville, holding slightly more than one-third of the area deposits, would not be changed, but it would become nearly as large as the largest bank and would hold 38.2% of the total deposits as compared to 39.4% for the largest bank. The four largest banks in Nashville, including the parties to this proposal, already are highly competitive, and although this merger would tend to equalize the two largest, there is no evidence that such equalization would outweigh the unfavorable factor of elimination of substantial competition. The growth record of Trust Company over the last five years (deposits increased 36.6%) reflects neither stagnation nor lack of a considerable degree of public acceptance for an institution having but one branch in a city where multiple branching by other major banks exists. Moreover, the trust

department of Trust Company is an aggressive competitor among the four largest Nashville banks for trust business.

In the application it is stated that savings and loan associations and credit unions in the service area provide strong competition for savings funds and that these institutions hold more than $278 million in accounts of this nature, compared with $377 million held by the commercial banks. Competition for mortgage loans is provided by the savings and loan associations, mortgage bankers, and insurance companies. There are 16 offices of eight large sales finance companies in the area which are estimated to have some $80 million in instalment paper, as compared to approximately $120 held by the banks. It is indicated that in the State, insurance companies hold over $1 billion in mortgage loans, and in the area, mortgage bankers have outstanding more than $320 million, and savings and loan associations hold $230 million. Direct lending agencies of the Government, also, are important in the lending function.

As the following tables show, the deposit structures and loan emphasis in the merging banks are quite dissimilar:

	National	Trust Company
Loan Ratio	55.1%	49.5%
Basic Loan Limit	$2,000,000	$654,610
Composition of Loan Portfolios: (Per Cent)		
Commercial and Industrial loans	40.6	25.7
Real estate loans	.8	34.2
Loans to financial institutions	14.5	2.4
Loans to individuals, including instalments	36.4	33.5
All other loans	7.7	4.2
	100.0	100.0
Deposit Structures: (Per Cent)		
IPC demand deposits	34.9	45.1
IPC time deposits	33.4	42.6
Public funds	12.4	10.8
Deposits of banks	18.8	1.2
All other deposits	.5	.3
	100.0	100.0

Despite the dissimilarity in the above statistics, the two banks are quite competitive in the field of commercial and industrial loans and instalment credit; also, for IPC demand and time deposits. The number of common depositors and borrowers and their volume is not indicated, although in a letter submitting supplemental information, it is indicated that there are several large corporations and individuals using the services of both banks. The service area of Na-

tional is somewhat broader than that of Trust Company, and includes the entire service area of the latter.

The application is silent as to similarity between interest rates and service charges; however, available information indicates that interest rates among Nashville banks are similar and competitive. Schedules of service charges employed by the merging banks and furnished subsequent to the application indicate no significant disparity in the charges imposed. During 1963, National sold participations in seven loans aggregating $13,702,400, of which it retained $8,292,400—these to avoid excessive lines. During the same period, Trust Company neither sold nor shared any loans with any other bank.

At the time of the October 4, 1963 examination of National, it held personal trust assets of $70,586,000 (number of accounts not available from our files), and held 98 corporate trust accounts wtih book value assets of $10,389,000. At the time of the November 4, 1963 examination of Trust Company, it was servicing 1,254 personal trust accounts with aggregate book value assets of $80,500,000; corporate trust activity was limited to accountable assets of $2,827,000. According to available information, First American National Bank held personal trust assets of approximately $315 million and corporate trust assets of $6,187,600. Commerce Union held personal trust assets of some $40 million. Although First American is the largest in volume, both National and Trust Company have sizeable trust departments and are aggressive competitors among the four largest banks in Nashville in this field, as well as with each other. Thus, two important competitors in the trust field would be combined into one, eliminating significant competition.

Majority ownership of Trust Company for many years was held by H. G. Hill Company, Inc., a local retail grocery chain; but in January 1964 this control was sold to William C. Weaver, Jr., financial vice president of the local National Life and Accident Insurance Company, and some twenty of his associates. The extent of the ownership and control of either of the merging banks is not shown; however, directors and officers in the resulting bank will own, collectively, only 8.7% of its outstanding stock. There are only six stockholders owning stock in both banks and these holdings are nominal. Neither bank is affiliated with nor has a stock interest in any other bank, the stock of which is owned by a bank holding company.

In United States District Court

Plaintiff's Exhibit No. 498

Board of Governors
of the
Federal Reserve System
Washington, D. C. 20551

Address Official Correspondence
to the Board.

Mrs. Dellinger.
May 28, 1964.

Assistant Attorney General,
Antitrust Division,
Department of Justice,
Washington 25, D. C.

Sir:

Pursuant to the established procedure, there are enclosed copies of a report on competitive factors that the Board is sending today to the Comptroller of the Currency with respect to an application submitted under Section 18(c) of the Federal Deposit Insurance Act.

Very truly yours, Karl E. Bakke, Assistant Secretary.

Enclosures.

Report on proposed merger of Nashville Bank and Trust Company, Nashville, Tennessee, into Third National Bank in Nashville, Nashville, Tennessee.

May 28, 1964.

REPORT BY THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

to the Comptroller of the Currency, under section 18(c) of the Federal Deposit Insurance Act, on the competitive factors involved in the proposed merger of Nashville Bank and Trust Company, Nashville, Tennessee into Third National Bank in Nashville, Nashville, Tennessee.

I. The Proposal

Nashville Bank and Trust Company, Nashville, Tennessee (Nashville Trust) deposits $39,653,000 as of March 11, 1964), and Third National Bank in Nashville, Nashville, Tennessee (Third National) (deposits $300,779,000 as of March 11, 1964), have made application for prior written consent of the Comptroller of the Currency to merge under the charter and title of the latter.

Third National operates 14 offices in Nashville and 1 branch in Donelson, about 7 miles from applicants' head offices. Both of Nashville Trust's offices are in Nashville. It is contemplated that the continuing bank would operate all offices of the two banks.

II. The Community

Nashville is the capital of Tennessee and the seat of government for Davidson County. It has a population of 170,874, and Davidson County has a population of 399,743, according to the 1960 census. The 1963 population of Metropolitan Nashville(Davidson County) is estimated at 423,000. Nashville is the largest city in middle Tennessee and is the main retail and wholesale center for a large area. The economy is well diversified, being based on industry, finance, commerce and agriculture. As capital of the State and regional headquarters for several Federal agencies, Nashville serves as a major governmental center. It is also headquarters for a number of religious organizations and is the home of 14 colleges and universities. Leading industrial products are chemicals, automobile glass, and shoes. Several large life insurance companies have their home offices in Nashville. Agricultural activities in the

middle Tennessee area include dairying and the raising of beef cattle, tobacco and cotton.

III. Competition Between the two Institutions

Applicants' main offices are one block apart in the downtown business section of Nashville. The sole branch of Nashville Trust is about 5 miles from applicants' main offices and approximately 2 miles from Third National's nearest branch (located within Nashville Municipal Airport); there are no banking offices situated between the aforementioned branches.

While Third National sold participations in seven loans in 1963 which were in excess of its legal lending limit, Nashville Trust did not engage in this type of activity.

The following schedule furnishes information about the types of loans and deposits held by the two banks.

	Per cent of total	
Loans	**Third National**	**Nashville Trust**
Commercial and industrial	41	26
Real estate	1	34
Instalment	36	34
Farm (not on real estate)	1	1
To financial institutions	14	2
For purchasing or carrying securities	3	3
All other	4	0
	100	100
Deposits		
IPC—demand	35	45
IPC—time	33	43
Public funds—demand and time	12	11
Banks—demand	19	1
Other—demand and time	1	0
	100	100

Third National serves about 365 correspondent banks most of which are located within a 250-mile radius of Nashville. Nashville Trust has only a small amount of correspondent bank business. The legal lending limit to a borrower at Third National is roughly three times as large as that of Nashville Trust.

The application does not indicate the banks' rates of interest on loans, service charges or interest rates paid on savings deposits. According to the applicants, Third

National's trust department holds 835 trust accounts. No information was furnished regarding the number of trust accounts held by Nashville Trust; however, the application indicates that Nashville Trust was founded originally as a trust institution and that commercial banking activities have been a comparatively recent development.

The application does not indicate the extent to which Third National and Nashville Trust have common customers. No common ownership or management was reported.

The application states that Mr. William C. Weaver, Jr. (vice president of National Life and Accident Insurance Company), and about 20 of his insurance company associates bought controlling stock interest in Nashville Trust in 1964.

Consummation of the instant proposal would eliminate the direct competition which presently exists between participants.

IV. Effect on Other Institutions

Applicants indicate that the "community" served by their banks includes Davidson County and seven other nearby counties. However, since all of participants' offices are located in Davidson County and since present State statutes permit banks to establish branches only in the county where the home office of the bank is located, it appears that Davidson County should be considered participants' immediate service area.

The following schedule reflects the relative position of participants and other banks headquartered in Davidson County (Nashville Standard Metropolitan Statistical Area), Tennessee.

Bank	No. of banking offices in Davidson County	%	Total deposits 12-20-63 (000 omitted)	%
Third National	15	30	$304,100	33.6
Nashville Trust	2	4	42,085	4.6
Combined	17	34	$346,185	38.2
First American N/B, Nashville	17	34	357,513	39.5
Commerce Union Bank, Nashville	12	24	185,871*	20.5
Capital City Bank, Nashville	1	2	5,763	.6
Citizens Savings Bank & T/C, Nashville	1	2	2,930	.3
Bank of Goodlettsville	1	2	5,724	.6
Whites Creek Bk & T/C	1	2	2,378	.3
Totals	50	100	$906,364	100.0

* This amount includes deposits of all offices of Commerce Union Bank including the deposits of eight branches which are situated outside of Davidson County. State statutes no longer permit the establishment of branches outside of the home office county.

Third National is the second largest bank in Davidson County, holding 33.6 per cent of the total deposits of all banks in the county. If the proposed merger is approved, Third National will hold 38.2 per cent of the county bank's deposits and would be slightly smaller than the largest bank in the county. The third largest bank in the county is about one-half the size of the two largest banks, and the remaining four banks in the county are substantially smaller, single-office institutions. It does not appear that consummation of the proposed merger would have any serious adverse effect on other banks in Davidson County.

Approximately 19 per cent of Third National's total deposits are those of other banks. The application indicates that Third National is furnished competition for such business from banks throughout Tennessee and adjoining States.

Nonbank financial institutions are active in Nashville. There are seven savings and loan associations in Davidson County with aggregate share accounts of about $209 million. Other types of nonbank competitors include insurance companies, credit unions, sales finance and personal loan companies, and factors.

Concentration

Three large banks in Nashville now hold almost 94 per cent of the total deposits of the eight banks serving Davidson County. Consummation of the proposed transaction would increase such concentration to about 98 per cent and eliminate the only medium-sized bank in Nashville. As previously noted, applicants indicate that the "community" served by their banks includes Davidson County and seven other nearby counties. While there are numerous banks in this eight-county area, the three large Nashville banks hold about 83 per cent of the total deposits of all banks in the eight counties.

While Nashville Trust is a relatively small bank as compared to Nashville's three largest banks, it is a significant alternate source of trust services. Nashville Trust's trust department is comparable in size to that of Commerce Union Bank and is almost as large as Third National's trust department. Subsequent to consummation of this merger, Third National would have the largest trust department in Nashville. Two banks would hold over three-fourths of the area trust business.

V. Conclusion with Respect to Competitive Factors

A merger of Nashville Bank and Trust Company into Third National Bank in Nashville would eliminate direct competition which exists between participants and would increase significantly the already heavy concentration of banking and trust business in Nashville. This proposal would have clearly adverse effects on competition.

Note

As required by section 18(c) of the Federal Deposit Insurance Act, this report is limited to "a report on the competitive factors involved," and is not a recommendation as to whether the application should be approved or disapproved.

In United States District Court

Plaintiff's Exhibit No. 537

Commerce Union Bank
Operating Ratios
1955—1964

	Net Current Earnings to Cap. Accounts	Net Income to Capital Accounts	Net Income to Total Assets	Total Cap. Accts. to Total Assets
1955				
1956	25.5	4.8	.27	5.6
1957	24.1	8.7	.49	5.6
1958	20.6	7.8	.41	5.3
1959	25.4	15.6	.88	5.6
1960	21.6	11.8	.74	6.2
1961	19.4	11.4	.72	6.3
1962	13.5	9.3	.62	6.7
1963	14.0	7.2	.49	6.8
1964	14.4	5.8	.36	6.2

C.U. (sub. 4/1/65)

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT NO. 538

W. H. CRISWELL—Real Estate Broker
Post Office Box 6733
Suite 233 Green Hills Office Building
Nashville, Tennessee 37215
CYpress 8-5555

February 17, 1964

Mr. W. S. Hackworth, President,
Nashville Bank & Trust Company,
Nashville, Tennessee.

Re: Green Hills Village Shopping Center

Dear Hack:

At the request of Mr. William C. Weaver Jr., I am sending you herewith a plot plan of Green Hills Village Shopping Center, on which is marked in red a building presently occupied by Mike Rose.

This building is approximately 57 x 59 feet, containing about 3,360 square feet.

Mr. Rose wrote me a letter a few days ago and offered to sell Green Hills Village, Inc. his business and lease for \$17,500.00. Subsequently Mike came to my office and talked to me at which he indicated that he could get \$7500.00 for his equipment and the awning outside, but leaving the air conditioning equipment in the building.

I have asked Mike to give me sixty days in writing that he would accept \$17,500.00 for his business and the cancellation of his lease. He promised to get the letter out but it has not been received.

Mr. Weaver was discussing with me the possibility of Green Hills Village, Inc. acquiring the lease in some manner from Mr. Rose and making a new lease with the Nashville Bank & Trust Company, provided in your opinion you would like to have a branch in this area.

I am sure that you are familiar with the Third National Bank branch, and its deposits, which I understand are in excess of \$9,000,000.00 The American Bank, I am told, has deposits in excess of \$4,000,000.00. Of course, they have only been here about three years now. Home Federal Sav-

ings & Loan Association has had satisfactory results. I am told that Fidelity Federal has deposits equal to the Third.

Mr. Weaver called me from Chicago this morning and suggested that I wrote you with respect to this particular property so that you might have an opportunity to think about it and upon his return he will discuss it with you. I am not trying to sell the location as we can easily rent this property to others, and we could also lease it to another bank.

If you decide this is something the Trust Company should do, then the rental for same would be $1,000.00 per month, for a term of twenty years, with the Trust Company making such changes and alterations as it deems necessary or advisable for its occupancy. Further, it would suit me personally better to reduce the rent in an amount equal to the net sum paid to Mr. Rose, which I am assuming would be about $10,000., and let the Trust Company also make this payment.

I am sending a copy of this letter to Mr. Weaver. He is to return to Nashville Wednesday. In the meantime if there is anything further you would like to consult with me about prior to his return, please feel free to call me.

With kindest regards, I am

Very truly yours, W. H. Criswell.

WHC:BTW

cc: Mr. William C. Weaver Jr.

Enclosure

Proposed Green Hills Office

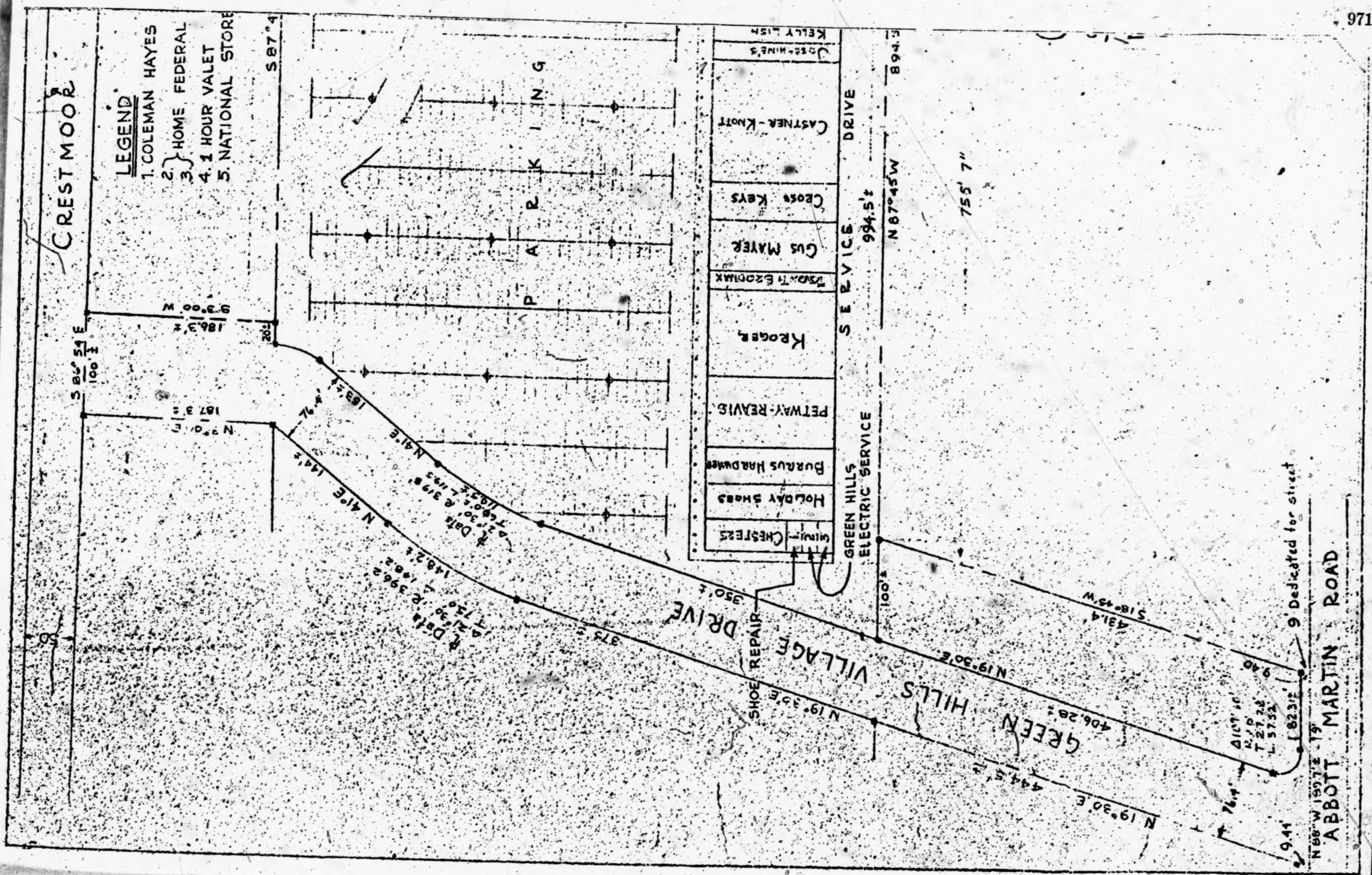
Job #2226

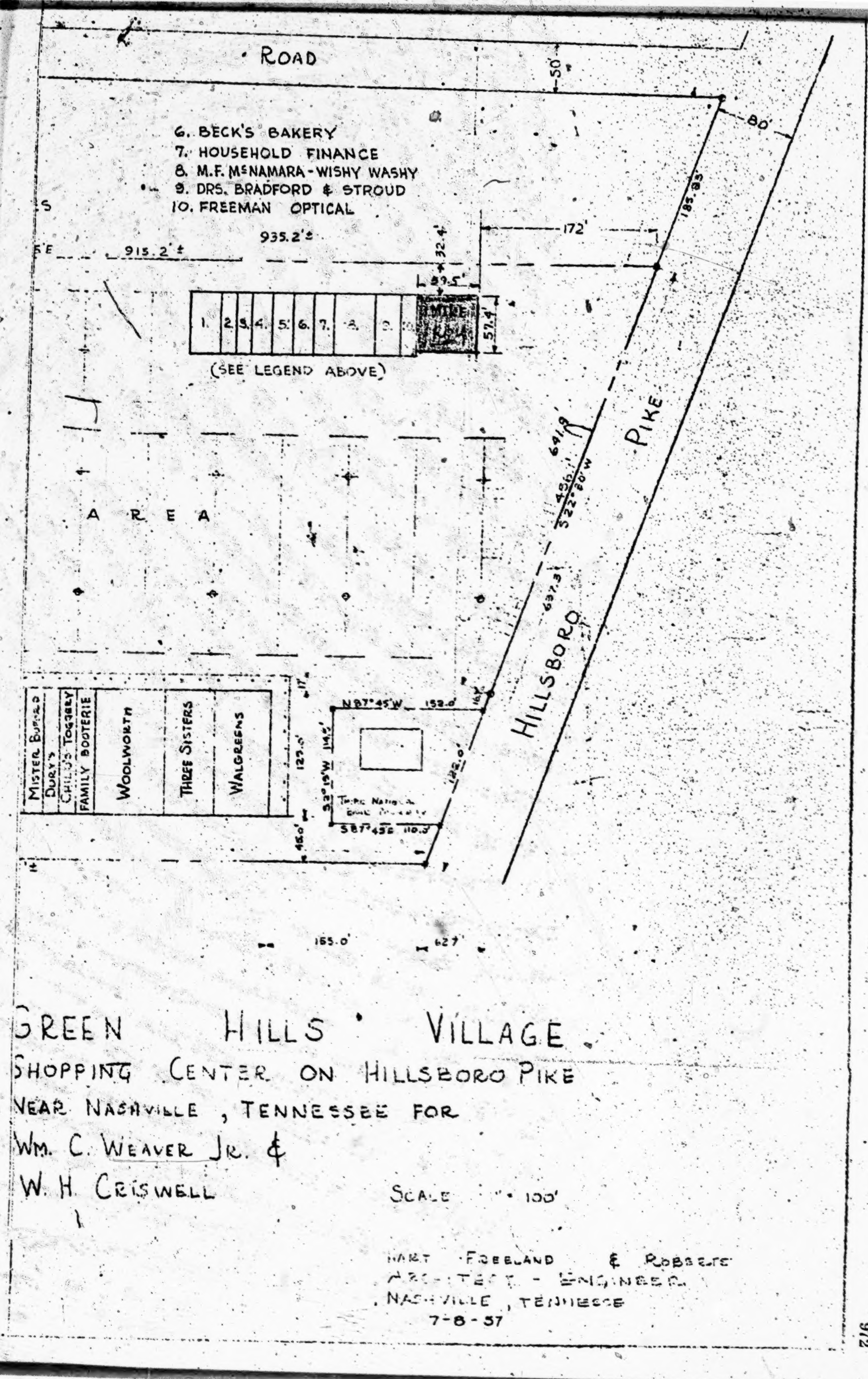
1.	Vault (Not including door or equipment)	$ 2,500.00
2.	Removal of Partitions, Floors, etc.	500.00
3.	Vinyl Floor	1,800.00
4.	Ceiling	900.00
5.	New Partitions, Doors, Patching, etc.	175.00
6.	Roof (Cutting, repairing, flashing, etc.)	200.00
7.	Glass and Glazing	385.00
8.	Exterior Concrete Curbs and Islands	600.00
9.	Painting	550.00
10.	New Metal Parapet (three sides)	6,400.00
11.	Signs (on Parapet and Exterior on Island)	1,300.00
12.	Electrical Work	4,000.00
13.	Plumbing Work (including Drinking Fountain)	175.00
14.	Millwork (Teller's, Coupon Booth, Conference Room, Check Desk)	5,275.00
15.	Aluminum Entrances and Doors	3,000.00
16.	Kitchen Unit (in Conference Room)	700.00
17.	Folding Door (in Conference Room)	225.00
18.	Miscellaneous	500.00
19.	Contractor's Overhead and Profit	2,919.00
20.	Contingency (5%)	1,605.00
21.	Architects-Engineers Fee	2,697.00
	Sub-Total	$36,406.00
22.	Paneling (Alternate in Banking Lobby, Officer's space, Work space and Conference Room)	2,000.00
23.	Bank Equipment (Vault Door, Vault Ventilator, Steel Partition, Deposit Boxes, Night Depository, Tellers Equipment	22,415.00
	Grand Total (Including Paneling Alternate)	$60,821.00

Note: Estimate does not include any Heating & Air Conditioning Work.

Hart, Freeland & Roberts
Architects—Engineers
303 Third National Bank Building
Nashville, Tennessee

March 11, 1964


CRESTMOOR
LEGEND
1. COLEMAN HAYES
2. } HOME FEDERAL
3.
4. 1 HOUR VALET
5. NATIONAL STORE
S 87°4
P A R K I N G
KELLY LISH
JOSEPHINE'S
CASTNER-KNOTT
CROSS KEYS
GUS MAYER
KROGER
PETWAY-REAVIS
BURRUS HARDWARE
HOLIDAY SHOES
CHESTER'S
SERVICE DRIVE
994.5'±
N 87°45 W
894.3
755' 7"
GREEN HILLS ELECTRIC SERVICE
SHOE REPAIR
GREEN HILLS VILLAGE DRIVE
S 18°45 W
431.4
N 19°30 E
406.28'±
N 19°30 E
444.5'±
350'±
375'±
N 41°E
183'±
144'±
148.2'±
76'
100'±
9.40
9.44
76.4'
182.3'±
9' Dedicated for street
ABBOTT MARTIN ROAD
186.3'±
187.3'±
S 86° 54' E
100'±
50


ROAD
50'
80'
185.83
6. BECK'S BAKERY
7. HOUSEHOLD FINANCE
8. M.F. McNAMARA - WISHY WASHY
9. DRS. BRADFORD & STROUD
10. FREEMAN OPTICAL
935.2'±
915.2'±
172'
32.4'
59.5'
57.4'
1. 2. 3. 4. 5. 6. 7. 8. 9. 10.
(SEE LEGEND ABOVE)
A R E A
PIKE
641.9
456.1'
S22°20'W
637.3
HILLSBORO
N87°45'W 152.0'
132.0'
S87°45E 110.3
32°15'W 114.5
129.0'
46.0'
MISTER BURGER
DURY'S
CHILD'S TOGGERY
FAMILY BOOTERIE
WOOLWORTH
THREE SISTERS
WALGREENS
165.0'
62.7
GREEN HILLS VILLAGE
SHOPPING CENTER ON HILLSBORO PIKE
NEAR NASHVILLE, TENNESSEE FOR
WM. C. WEAVER JR. &
W. H. CRISWELL
SCALE 1" = 100'
HART FREELAND & ROBERTS
ARCHITECT - ENGINEERS
NASHVILLE, TENNESSEE
7-8-57

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT NO. 539

Interrogatory No. 2. For each banking service, described in response to Interrogatory 1a, offered by Third National which was not offered by N B & T state the operating revenues for each of the calendar years 1961 through 1963, and for January 1, 1964 through June 30, 1964.

Answer to Interrogatory No. 2.

2.

	Operating Revenue 1961	1962	1963	First 6 Months 1964
Special Checking	—	22,902.22	84,184.16	51,623.09
Savings Certificates	no direct revenue			
Post Office Lock Box Deposit Plan	analysis charge			
Night Transit	no charges			
Payroll Preparation				304.00
Account Reconciliation	analysis charge			
Private and Commercial Airplanes	included in Total Loan Interest not distinguishable			
Compact Homes	included in Total Loan Interest not distinguishable			
Credit-by-check	26,698.08	22,631.60	17,427.62	7,552.24
Debt Payment	included in Total Loan Interest not distinguishable			
Discount Trade Notes	43,709.84	35,995.51	29,780.88	15,920.53
Mobile Homes	104,445.38	92,528.96	116,403.01	84,257.97
Vacation	included in Total Loan Interest not distinguishable			
Term Loans	included in Total Loan Interest not distinguishable			
Purchase of Dealers Retail Paper				
Excess Loans for Correspondents	included in Total Loan Interest not distinguishable.			
Correspondent Bank Facilities	no charge			
Bond Coupon Collection	4,194.78	4,530.84	4,930.20	2,553.12
Securities Custody	no charge			
Customer Conference Rooms	no charge			
Exchange Foreign Money	no charge			
Remittance Foreign Funds	included in Other Income not distinguishable			
Statistical Information	no charge			
Stock Drafts	included in Other Income not distinguishable			

	1961	1962	1963	First 6 Months 1964
Transfer Foreign Funds....	included in Other Income not distinguishable			
Analysis Financial Statements of Customers......	no charge			
Bank Wire Service........	no charge			
Electronic Computer Center	no charge			
Centrex Telephone Equipment..................	no charge			
Watts Line Service........	no charge			
Freight Payment Plan.....				
Clearing Facilities for Correspondents............	no charge			

Interrogatory No. 3. For each banking service, designated in response to Interrogatory 1, offered by Third National and N B & T, respectively, state the collection, exchange and service charges, interest rates paid and received, commissions, fees, restrictions and other charges applicable as of December 31, 1963, and describe any changes effectuated since January 1, 1960.

Answer to Interrogatory No. 3.

3A. Listed below are the banking services offered by Third National with a statement as to the collection, exchange and service charges, interest rates paid and received, commissions, fees, restrictions and other charges applicable as of December 31, 1963, along with all changes since January 1, 1960.

Deposit Functions

Checking—Personal: Prior to May, 1962, each account was given 5 free checks per $100 of average balance with excess checks charged at $.05 per check. Since May, 1962, there is a monthly maintenance charge of $.90 plus $.05 per check less credit of $.25 per $100 of average balance. See attached schedule.

Checking—Firm: Analysis of account based on attached schedule of charges and credits.

Special Checking—$.10 per check plus $.25 for a statement which can be requested monthly or quarterly. See attached regulations.

Savings—Paid interest at rate of 3% per year until January 1, 1962, at which time increased to 3½% for funds

on deposit less than a year and 4% for funds left on deposit a full year.

Automatic Savings—No charge.

Certificates of Deposit—Up to 3% per year paid until January 1, 1962, at which time changed to 1% on maturities up to 90 days, 2½% on maturities between 90 days and 6 months, 3½% for maturities of less than 12 months but more than 6 months, and 4% for those over 12 months. On July 17, 1963, any maturity over 90 days was authorized to be paid up to 4%, less than 90 days maturity was paid up to 1%.

Savings Certificates, 5 year 4%—4% interest paid on Series "C" or "CM" Certificates, on Series "D," a discount Certificate, the 4% annual rate compounded for 5 years yields 4.39%.

Christmas Club—No interest paid.

Post Office Lock Box Deposit Plan—Analysis Charge: 16¢ per item if photostat of all checks is required and 12¢ per item if no photostats are required.

Bank-by-Mail—No charge.

Night Depository—No charge.

Drive In Windows—No charge.

Night Transit—No charge.

Certified Checks—No charge.

Payroll Preparation—30¢ per check or 20¢ per credit with minimum of $50 for each payroll period. Set up fee of 50¢ per employee.

Account Reconciliation—Analysis Charge:

Complete—10¢ per check
Partial—7¢ per check

Depository for

Court Funds—No charge.
School Funds—No charge.
Social Security Depository Receipts—No charge.
State and County Funds—No charge.
State Sales Tax—No charge.
Withholding Tax—No charge.

Loans—All loans in the Loan and Discount Department are handled on a simple interest basis up to the legal maximum of 6%. All loans in the Finance Department

are handled on a discount or add-on basis up to the legal maximum of 6%. All types of loans listed below are subject to these rates unless otherwise noted. Each of these categories are handled in both the Loan and Discount Department and the Finance Department.

Accounts Receivable—Up to 6% simple interest plus up to an additional 2% for handling.
Airplanes—Private and commercial.
Appliances
Automobiles
Boats, Motors, Trailers
Bus
Commercial
Commodity
Compact Homes
Construction—Up to 6% simple interest plus up to an additional 2% for brokerage.
Credit-by-Check—1% per month of monthly outstanding balance. ½ of 1% is for interest, ½ of 1% is for life insurance.

Floor Plan Financing for Dealers—New cars:

January 1960 to September 1960—5½% simple; September 1960 to date—5% simple.
—Used cars: 6% simple.

Debt Payment
Discount Trade Notes
Educational—6% simple only.
Equipment
G. I. Farm—Up to 5¼% simple interest.
G. I. Homes—Up to 5¼% simple interest.
FHA Home Improvement—Up to \$2,500, 5%; 4% on all over \$2,500.
FHA Mortgages—Up to 5¾% simple interest.
Home Modernization
Insurance Premium
Life Insurance
Lines of Credit
Medical and Dental Expense
Mobile Home
Mortgages

Personal
Property Improvement
Real Estate
Small Business
Tax Payment
Vacation
Warehouse Receipt
Mortgage Servicing—$.25 per payment.
Term Loans

Purchase of Dealers Retail Paper—Automobiles:

New—25% down, 36 months; late model—25% down, 30 months; second and third year—25% down, 24 months; older model—25% down, 24 months.

Appliances: 10% down, 24 months.

Finance charge on dealer paper varies depending on year model from $5 per $100 per year up to $15 per $100 on old cars. Dealer reserve depends on competition from other financing institutions, dealer, etc.

Mortgage Warehousing
*Excess Loans for Correspondents
Tractor Trailers
Trailers
Trucks

Correspondent Bank Facilities

Safe Deposit

Lock Boxes—$5.00, $6.50, $7.50, $8.50, $12.00, $15.00, $20.00, $30.00, plus 10% Federal Tax depending on box size.

Bond Coupon Collection—$.06 per coupon.
Securities Custody—No charge.
Valuables Storage—$2.50 for first cubic foot; $1.00 for each additional cubic foot.

Investments

Bond Purchase—No charge.
Bond Sales—No charge.

Municipal Financing—Varies with each transaction dependent on market conditions, political subdivision, maturity, etc.
Investment Counsel—No charge.

Other Services

Bank drafts—$.25 per draft.
Bills of Lading—$1 per $1,000 up to $10 maximum; $.25 minimum.
Cashiers Checks—$.15 for customers } Up to $250—
$.20 for non-customers }

Over $250:

$ .20 up to $500
.25 from $500 to $1,000
.50 from $1,000 to $1,500
.75 from $1,500 to $2,500
1.00 from $2,500 to $5,000
1.50 over $5,000

Check Collection—$1 per $1,000; minimum $.25; maximum $1.
Customer Conference Rooms—No charge.
Customer Parking—No charge.
Draft Collection—$1 per $1,000 up to $10,000; $.25 minimum.
Exchange Foreign Money—No charge.
Guarantee Signatures—No charge.
Industrial Development Assistance—No charge.
Letters of Credit—Personal: $10 (of which bank retains $5) up to $10,000; over $10,000—$10 plus $1 per thousand.
Commercial: ¼ of 1% with $10 minimum (of which bank retains ⅛ of 1%).
Letters of Introduction—No charge.
Note Collection—$.25 per note per payment.
Remittance Foreign Funds—$1.50 per transaction.
Savings Bonds—$.10 per bond for redemption received by bank from U.S. Treasury.
Statistical Information—No charge.
Stock Drafts—Incoming: $1.50 maximum: $.25 minimum.
Outgoing: Interest up to 6% on amount for days outstanding.

Transfer of Foreign Funds—$1.50 per transaction.

Travelers Checks—$1 per $100 issued of which bank retains approximately ⅓.

Wire Fund Transfers—Varies from $1 to $1.50 per transfer.

Bank Wire Service—No charge.

Business Assistance—No charge.

Financial Advice—No charge.

Committeeships—No charge.

Electronic Computer Center—No charge.

Centex Telephone Equipment—No charge.

Watts Line Service—No charge.

Analyzing Financial Statements of Customers—No charge.

Supplying Credit Information for Customers—No charge.

Freight Payment Plan—$.25 per payment.

Clearing Facilities for Correspondents—No charge.

Credit Life Insurance—Loan and Discount Department: 2% per annum

Finance Department: 1% per annum

D1-3A

Third National Bank
Nashville, Tennessee

Advice of Service Charge — Month Ending__________19____
Account of:

Average Balance	Maintenance Fee	Checks Paid	Credit Allowance	Amount Charged
Less Than $100.00	.90	@.05	None	
$100.00 to $200.00	.90	@.05	.25	
$200.00 to $300.00	.90	@.05	.50	
$300.00 to $400.00	.90	@.05	.75	
$400.00 to $500.00	.90	@.05	1.00	
Over $500.00	None	@.05	.25 per $100.00	

Month

Income Summary

Average Daily Balance	—	—	—
Less Uncollected Funds	—	—	—
Net Balance	—	—	—
Less Required Reserves (25%)	—	—	—
Net Available For Investment	—	—	—
Available Income @ 4%	—	—	—
Other Income	—	—	—
	—	—	—
	—	—	—
	—	—	—
Total Income	—	—	—

Expense

Checks Paid @	—	—
Checks Deposited @ .02	—	—
Checks Cashed @ .05	—	—
Transfers @ 1.00	—	—
Maintenance Fee	—	—
Exchange	—	—
Interest on Overdraft Balance	—	—
Total Expense	—	—
Total Income	—	—

Loss Profit

Rules and Regulations Covering Special Checking Account

THIRD NATIONAL BANK
in
Nashville, Tenn.

(1) A fee of 10¢ for each check paid against the account will be charged when the check is paid.
(2) Checks and deposits prepared for Special Checking Accounts with your account number shown must be used. A charge of 50¢ will be made to your account when incorrect form is used.
(3) Statements will be prepared and mailed each month or each 3 months at the option of the customer. A fee of 25¢ will be charged to the account for each statement.
(4) Checks drawn in excess of your balance or against funds which have not been collected by the bank will be returned. The account will be charged $3.00 for each item returned for the reason "Not sufficient funds", "Drawn against uncollected funds", or "Post-dated".
(5) Checks will not be certified.
(6) A charge of $1.00 will be made for each stop-payment request.

3B. Listed below are the banking services offered by Nashville Bank and Trust with a statement as to the collection, exchange and service charges, interest rates paid and received, commissions, fees, restrictions and other charges applicable as of December 31, 1963, along with all changes since January 1, 1960.

Deposit Functions

Checking—Personal: Prior to June 1, 1962, no base charge; 3 free checks per month, any over that were \$.05 each. After June 1, 1962, see attached schedule.

Checking—Firm: No analysis or service charge

Savings—Paid interest at the rate of 3% per year until January 1, 1962, at which time increased to 3½% for funds on deposit less than a year and 4% for funds left on deposit a full year.

Automatic Savings—No charge.

Certificates of Deposit—Up to 3% per year paid until January 1, 1962, at which time changed to 1% on maturities up to 90 days, 2½% on maturities between 90 days and 6 months, 3½% for maturities of less than 12 months but more than 6 months, and 4% for those over 12 months. On July 17, 1963, any maturity over 90 days was authorized to be paid up to 4%, less than 90 days maturity was paid up to 1%.

Christmas Club—No interest paid.

Bank-by-Mail—No charge, but bank prepaid mail rate.

Night Depository—No charge.

Drive In Windows—No charge.

Certified Checks—No charge.

Depository for

Court Funds—No charge.

School Funds—No charge.

Social Security Depository Receipts—No charge.

State and County Funds—No charge.

State Sales Tax—No charge.

Withholding Tax—No charge.

Loans—All loans in the Loan and Discount Department are handled on a simple interest basis up to the legal

maximum of 6%. All loans in the Finance Department are handled on a discount or add-on basis up to the legal maximum of 6%. All types of loans listed below are subject to these rates unless otherwise noted. Each of these categories are handled in both the Loan and Discount Department and the Finance Department.

Accounts Receivable—Up to 6% simple interest plus up to an additional 2% for handling expenses.

Appliances
Automobiles
Boats, Motors, Trailers
Bus
Commercial
Commodity
Construction—6% simple plus 1½% brokerage.
Floor Plan Financing for a Dealer—5% simple interest
Educational—6% simple only.
Equipment
G. I. Farm—Up to 5¼% simple interest.
G. I. Homes—Up to 5¼% simple interest.
FHA Home Improvement—Up to $2,500, 5%; 4% on all over $2,500.
FHA Mortgage—Up to 5¾% simple interest.
Home Modernization
Insurance Premium
Life Insurance
Lines of Credit
Medical and Dental Expense
Mortgages
Personal
Property Improvement
Real Estate
Small Business
Tax Payment
Warehouse Receipt
Mortgage Servicing—$.25 per payment.
Mortgage Warehousing
Tractor Trailers
Trailers
Trucks

Safe Deposit

Lock Boxes—\$3.00, \$5.00, \$7.50, \$8.00, \$10.00, \$12.00, \$15.00, \$30.00, \$35.00, plus 10% Federal Tax depending on size of box.
Valuables Storage—\$2.50 for first cubic foot, plus \$1.00 for each additional cubic foot with a \$1.00 minimum.

Investments

Bond Purchase—No charge.
Bond Sales—No charge.
Investment Counsel—No charge.

Other Services

Bank Drafts—\$.10 per \$100; maximum \$10.00; minimum \$.25.
Bills of Lading—\$.10 per \$100; maximum \$10.00; minimum \$.25.
Cashiers Checks—No charge for customers; for non-customers \$.10 per \$100 up to \$1.50 maximum; \$.25 minimum.
Check Collection—No charge for customer, \$1 per \$1,000 with \$10 maximum for non-customers with \$1 minimum.
Customer Parking—No charge.
Draft Collection—\$.10 per \$100 up to \$10.00 maximum with \$.25 minimum.
Guarantee Signatures—No charge.
Industrial Development Assistance—No charge.

Letters of Credit

—Commercial: 7/16 of 1% with \$10.00 minimum (of which bank retained ¼ of 1%).
—Personal: \$10 (of which bank retained \$5).

Letters of Introduction: No charge.
Note Collection—\$.25 per note per payment.
Savings Bonds—\$.10 per bond for redemption received by bank from U.S. Treasury.
Stock Drafts—\$1.50 per draft plus 6% on amount for period outstanding.
Travelers Checks—\$1 per \$100 issued of which bank retains ⅓.

Wire Fund Transfers—At Western Union cost.
Business Assistance—No charge.
Financial Advice—No charge.
Committeeships—No charge.
Real Estate Sales and Rental—5% of sale price; rental fees computed in accordance with the National Association of Real Estate Boards.
Credit Life Insurance
—Loan and Discount Department: 2% per annum
—Finance Department: 1% per annum
Supplying Credit Information for Customers—No charge.

Nashville Bank and Trust Company

Monthly Checking Account Service Charge
(Effective June 1, 1962)

Average Balance	Base Charge	Free Checks Allowed	Additional Checks
$ 1.00 to $100.00	.75	2	5¢ Each
$100.00 to $200.00	.50	5	5¢ Each
$200.00 to $300.00	None	10	5¢ Each
$300.00 to $400.00	None	15	5¢ Each
$400.00 to $500.00	None	20	5¢ Each

Separate accounts of man and wife will be considered as one account.

$500.00 Savings Account or more will be exempt checking account from above charges.

We Reserve the Right To Analyze the Activity in Accounts.

No Charge on Accounts Not Checked on.

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT NO. 540

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION

Civil Action No. 3849

UNITED STATES OF AMERICA, Plaintiff,

vs.

THIRD NATIONAL BANK IN NASHVILLE AND NASHVILLE BANK AND TRUST COMPANY, Defendants.

Defendants' Answers to Interrogatories Nos. 1 Through 35 Propounded by Plaintiff

Defendants hereby answer Interrogatories Nos. 1 through 35 propounded by Plaintiff United States of America on January 19, 1965, as follows:

Interrogatory No. 1. Describe each banking service (e.g. classes of deposit accounts, loans by types, safe deposit rentals, annual savings clubs, etc. but excluding trust department services) offered both by Third National and NB&T during the period January 1, 1961 through August 17, 1964, and

a. Indicate each service offered by Third National which was not offered by NB&T during said period,
b. Indicate each service offered by NB&T which was not offered by Third National during said period,
c. For each of the above-described services give the dates from January 1, 1961 through August 17, 1964 during which they were in effect.

Answer to Interrogatory No. 1.

1. Listed below are the services offered by the Third National Bank and Nashville Bank and Trust Company during the period January 1, 1961 through August 17, 1964. Those services offered by Third National but not offered by Nashville Bank and Trust are indicated by an asterisk

(*). Those services offered by Nashville Bank and Trust but not offered by Third National are indicated by two asterisks (**). All services have been in effect since January 1, 1961, at both banks except when noted. The date such service went into effect refers to Third National only as these services were not offered by Nashville Bank and Trust.

Services

Deposit Functions

Checking
*Special Checking (Date in effect May 24, 1962)
Savings
Automatic Savings
Certificates of Deposit
*Savings Certificates, 5 year 4% (Date in effect April 1, 1962)
Christmas Club
*Post Office Lock Box Deposit Plan
Bank-by-Mail
Night Depository
Drive In Windows
*Night Transit
Certified Checks
*Payroll Preparation (Date in effect May, 1963)
*Account Reconciliation

Depository for

Court Funds
School Funds
Social Security Depository Receipts
State and County Funds
State Sales Tax
Withholding Tax

Loans

Accounts Receivable
*Private and Commercial Airplanes
Appliances
Automobiles
Boats, Motors, Trailers
Bus

Commercial
Commodity
*Compact Homes
Construction (See Footnote 3.)
*Credit-by-Check
Floor Plan Financing for Dealers (See Footnote 1.)
*Debt Payment
*Discount Trade Notes
Education
Equipment
G. I. Farm
G. I. Homes
FHA Home Improvement
FHA Mortgage
Home Modernization
Insurance Premium
Life Insurance
Lines of Credit
Medical and Dental Expense
*Mobile Home
Mortgages
Personal
Property Improvement
Real Estate
Small Business
Tax Payment
*Vacation
Warehouse Receipt
Mortgage Servicing
*Term Loans
Tractor Trailers
*Purchase of Dealers Retail Paper (See Footnote 2.)
Trucks
Mortgage Warehousing
*Excess Loans for Correspondents
Trailers

*Correspondent Bank Facilities

Safe Deposit

Lock Boxes
*Bond Coupon Collection
*Securities Custody
Valuable Storage

Investments

Bond Purchase
Bond Sales
*Municipal Financing
Investment Counsel

Other Services

Bank Drafts
Bills of Lading
Cashiers Checks
*Customer Conference Rooms
Customer Parking
Draft Collection
*Exchange Foreign Money
Guarantee Signatures
Industrial Development Assistance
Letters of Credit
Letters of Introduction
Note Collection
*Remittance Foreign Funds
Savings Bonds
*Statistical Information
*Stock Drafts
*Transfer of Foreign Funds
*Analyzing Financial Statements of Customers
Supplying Credit Information for Customers
Check Collection
Credit Life Insurance
Travelers Checks
Wire Fund Transfers
*Bank Wire Service
Business Assistance
Financial Advice

Committeeships
*Electronic Computer Center (Date in effect March, 1963)
*Centrex Telephone Equipment (Date in effect March, 1963)
*Watts Line Service (Date in effect March, 1963)
**Real Estate Sales and Rental
*Freight Payment Plan
*Clearing Facilities for Correspondents

1. This is listed as a service offered by both banks; however, Nashville Bank has only one dealer for which floor plan financing is handled and that one is Cumberland Motors, a rather special relationship. They do not go into floor planning as a general practice.

2. Although this is an active function of Third National Bank, Nashville Bank and Trust Company does not purchase retail paper from Cumberland Motors, the only dealer for which floor planning is handled. Neither does the Nashville Bank handle papers for appliance dealers, home improvements and other types of dealers. A limited amount of paper was purchased from one small used car dealer by Nashville Bank and Trust Company.

3. This is listed as a service offered by both banks and these comments would apply to many other items where services are offered but none are used. The Nashville Bank and Trust Company has advised that they have not made a construction loan in more than ten years.

In United States District Court

Plaintiff's Exhibit No. 543

Interrogatory No. 32. a. With respect to (1) demand deposits, and (2) time and savings deposits, within the following ranges:

(a) $1 to $1,000
(b) $1,001 to $10,000
(c) $10,001 to $50,000
(d) $50,001 and over

state for NB&T and Third National, respectively:

(i) extent of its interest in securing accounts in each size category;

(ii) efforts made to increase the number of accounts in each size category;

(iii) approximate percentage as of December 20, 1963 of accounts in each range by number and dollar value of total accounts of that nature (an estimate is acceptable).

b. Supply like information with respect to loans within the following ranges:

(1) $1 to $2,500
(2) $2,501 to $10,000
(3) $10,001 to $50,000
(4) $50,001 and over.

Answer to Interrogatory No. 32.

32. a. (i) With respect to demand deposits and time and savings deposits within the ranges stated, both the Nashville Bank & Trust Company and the Third National Bank have a keen interest in acquiring accounts in all size categories.

(ii) In regard to the efforts exerted by either bank, it may be well to point out that advertising in mass media such as radio, television and newspapers is directed principally at the consumer rather than the business prospect. On the

other hand, personal solicitation by officers and employees, though utilized to some extent on the consumer level, is generally confined to the solicitation of business accounts. Some of the so-called retail or consumer accounts at any bank can represent, or have the potential for representing, substantial account balances, while some firm accounts amount to very little. In many instances when the initial contact is made on the retail prospect or the business prospect, the bank officers are completely unaware of the potential or lack of same for the account.

In addition to the usual solicitation conducted by both banks through advertising media and personal solicitation, Third National Bank has a "New-Comers" service which assists couples or individuals moving to Nashville in the location of a home as well as attending to many of the necessary details of becoming settled in the community.

(iii) As of December 31, 1963, the Third National Bank had approximately the percentages of accounts as shown in the following ranges by number and dollar value:

	Demand*		Time and Savings	
	By #	By $	By #	By $
(a) $1 to $1,000	82%	7%	71%	5%
(b) $1,001 to $10,000	15%	17%	24%	42%
(c) $10,000 to $50,000	2%	18%	4%	34%
(d) $50,001 and over	1%	58%	1%	19%
	100%	100%	100%	100%

*IPC accounts only.

On this same date the approximate percentages for the Nashville Bank & Trust Company were as follows:

	Demand		Time and Savings	
	By #	By $	By #	By $
(a) $1 to $1,000	79%	4%	64%	5%
(b) $1,001 to $10,000	17%	12%	28%	35%
(c) $10,001 to $50,000	3%	14%	7%	39%
(d) $50,001 and over	1%	70%	1%	21%
	100%	100%	100%	100%

b. (i) and (ii)

The extent of interest in securing loans of all sizes is just as keen on the part of both banks as their interest in securing all sizes of deposit accounts. This is particularly true since the consumer loans handled on a monthly repayment basis generally bear a greater yield than do loans handled on a fixed maturity basis. Every effort is exerted to obtain sound loans of all categories, however.

(iii) As of December 31, 1963, the Third National Bank had approximately the percentages of accounts as shown in the following ranges by number and dollar value:

	Total Loans By #	Total Loans By $
(1) $1 to $2,500	81%	13%
(2) $2,501 to $10,000	13%	15%
(3) $10.001 to $50,000	5%	24%
(4) $50,001 and over	1%	48%
	100%	100%

As a matter of interest, the percentages according to department were approximately as follows:

	Loan and Discount By #	Loan and Discount By $	Instalment By #	Instalment By $
(1) $1 to $2,500	60%	4%	89%	49%
(2) $2,501 to $10,000	21%	9%	10%	35%
(3) $10,001 to $50,000	15%	27%	1%	12%
(4) $50,001 and over	4%	60%	—	.4%
	100%	100%	100%	100%

On the same date the approximate percentages for the Nashville Bank & Trust Company were as follows:

	Total Loans By #	Total Loans By $
(1) $1 to $2,500	78%	16%
(2) $2,501 to $10,000	16%	20%
(3) $10,001 to $50,000	5%	26%
(4) $50,001 and over	1%	38%
	100%	100%

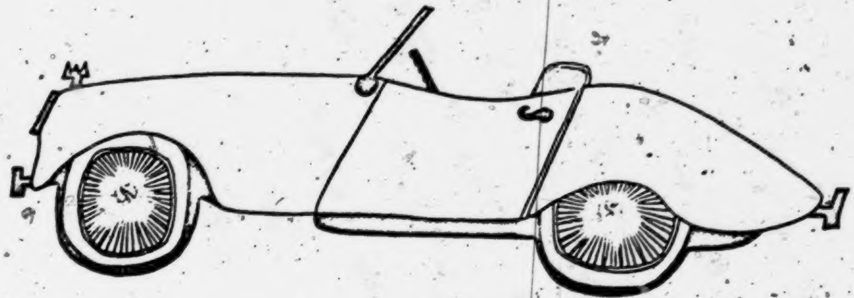
As a matter of interest, the percentages according to department were approximately as follows:

	Loan and Discount		Instalment	
	By #	By $	By #	By $
(1) $1 to $2,500..........	69%	5%	96%	82%
(2) $2,501 to $10,000.....	18%	10%	4%	16%
(3) $10,001 to $50,000....	10%	26%	—	2%
(4) $50,001 and over.....	3%	59%	0	0
	100%	100%	100%	100%

PLAINTIFF'S EXHIBIT No. 544

The Community News & Madison Shopper, Wed., Nov. 13, 1963 —

This kind of wheeling . . .



. . . makes dealing easy!

Pick an auto—any auto! And be just as selective when you choose your financing! Ask your dealer to finance it through Third National!

You'll find it *pays* to borrow from Third National, where you get the benefit of *low bank rates* and convenient repayment terms tailored to meet your individual needs!

Service is fast, friendly and efficient! No red tape! No long wait! We like to say "yes" to your money needs!

So—look for value when you buy that new or used car. And be just as selective when you choose the financing. Ask your dealer to finance it through Third National, the bank where you always get more from your money!

THIRD NATIONAL BANK IN NASHVILLE

MEMBER FEDERAL DEPOSIT INSURANCE CORPORATION

In United States District Court

Plaintiff's Exhibit No. 545

MAR 2 1963

STOP AND SAVE!

on

AUTOMOBILE FINANCING

5% NEW—6% USED

We finance on the Following Charts

Save This Chart For Future Use!

NEW CARS

Amount financed	24 Monthly payments	30 Monthly payments	36 Monthly payments
$ 500	$ 22.94	$18.75	$15.96
800	36.70	30.01	25.55
1000	45.88	37.51	31.93
1200	55.06	45.02	38.32
1400	64.23	52.52	44.71
1600	73.41	60.02	51.10
1800	82.59	67.53	57.49
2000	91.76	75.03	63.87
2500	114.71	93.79	79.84

USED CARS

Amount financed	12 Monthly payments	18 Monthly payments	24 Monthly payments
$ 500	$ 45.20	$ 30.96	$23.95
800	71.80	49.19	37.88
1000	89.53	61.33	47.24
1200	107.26	73.48	56.59
1400	124.99	85.63	65.95
1600	142.72	97.78	75.30
1800	160.45	109.92	84.66
2000	178.18	122.07	94.02

18 and 24 Months on late models

Save This Chart For Future Use!

NASHVILLE BANK and TRUST COMPANY

315 UNION ST. **AL 6-3611**

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT NO. 546

546
GX
IDENTIFICATION
OFFERED
RECEIVED
EXCLUDED
WITHDRAWN

When it's time to trade for another car...
Get your auto loan where you are known!

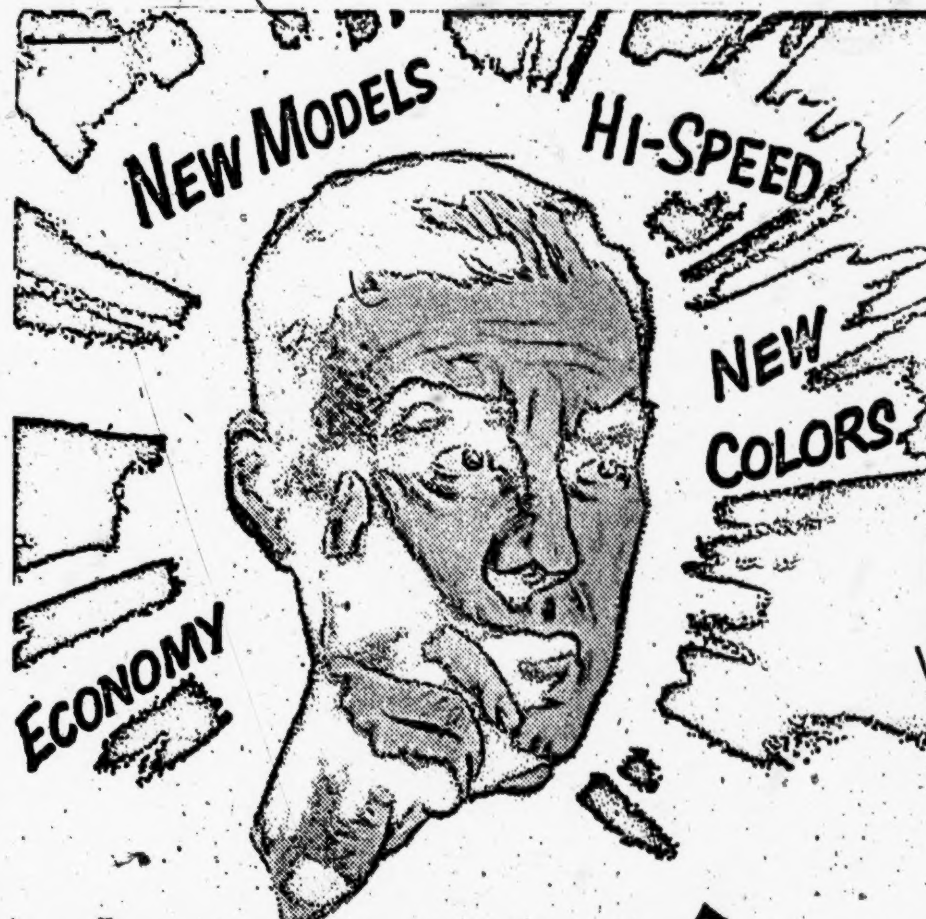
When you buy your new car . . . and financing is your next step, you will find it easy and convenient to arrange a low-cost auto loan at the Nashville Bank and Trust Office where you are already known and appreciated.

So — shop for the best bargain in a **new** or **used** car, then call Nashville Bank and Trust Office, 256-3611, and take advantage of our Low Bank Rates!

NASHVILLE BANK & TRUST OFFICE *of* THIRD NATIONAL BANK

MEMBER FEDERAL DEPOSIT INSURANCE CORPORATION

In United States District Court
Plaintiff's Exhibit No. 547



NEW CA[R] FEVER

GX 547
IDENTIFICATION
OFFERED
RECEIVED
EXCLUDED
WITHDRAWN

Don't let it turn into *High-C[ost]* FINANCE FEVE[R]

Check these examples of low monthly payments on NEW cars

NEW CARS

Amount to be financed	24 Monthly payments of only	30 Monthly payments of only	36 Monthly payments of only
$ 500	$ 22.94	$18.75	$15.96
800	36.70	30.01	25.55
1000	45.88	37.51	31.93
1200	55.06	45.02	38.32
1400	64.23	52.52	44.71
1600	73.41	60.02	51.10
1800	82.59	67.53	57.49
2000	91.76	75.03	63.87
2500	114.71	93.79	79.84

USED CARS

Check these examples of low monthly payments on USED c[ars]

Amount to be financed	12 Monthly payments of only	18 Monthly payments of only	24 Monthly payments of only
$ 500	$ 45.20	$ 30.96	$23.85
800	71.80	49.19	37.88
1000	89.53	61.33	47.24
1200	107.26	73.48	56.59
1400	124.99	85.63	65.95
1600	142.72	97.78	75.30
1800	160.45	109.92	84.66
2000	178.18	122.07	94.02

18 and 24 Months on late models

STOP!

DON'T SIGN ANY OTHER FINANCE PAPERS. YOU CAN SAVE A MIDDLEMAN'S PROFIT WITH NASHVILLE BANK AND TRUST CO.

GO! Apply for an Auto Loan with . . .

NASHVILLE BANK & TRUST CO.

Or Through Your Own "Automobile Insurance Agent"

SAVE AS MUCH AS $150 . . . or more!

With a Nashville Bank and Trust Co. Auto loan, you may save as much as $150, or more, and you'll know exactly how much your financing costs will be from the day you take delivery of your car until the last payment is made.

In addition, you can purchase your insurance from your automobile insurance agent . . . who can also arrange your loan for you. Take up to 36 months to repay a new car loan; up to 24 to repay a used car loan—the interest is only $5.00 per hundred per year on new cars and $6.00 per hundred per year on used cars . . .

FREE Parking While Banking.
Use Nashville's Most Convenient Banking Parking Garage.
Entrance on 3rd Ave., N.

"Where Banking Is a Pleasure"

Feb. 25, 1963

NASHVILLE BAN[K] AND TRUST COMPAN[Y]

MEMBER FEDERAL DEPOSIT INSURANCE CORPORATION

TWO LOCATIONS

IN UNITED STATES DISTRICT COURT
PLAINTIFF'S EXHIBIT No. 548

May 6 1963

Shopping for a new car?

WHEN YOU SEE ONE YOU WANT, SEE

NASHVILLE BANK AND TRUST COMPANY

You'll drive a bargain if your car is financed through us.
Our low bank rates mean extra savings for you.
What's more, you can expect fast service without red tape.
And buy your insurance thru the agent of your choice.
Convenient repayment plans, too.

5% NEW CARS 5%

Amount to be financed	24 Monthly payments of only	30 Monthly payments of only	36 Monthly payments of only
$ 500	$ 22.94	$18.75	$15.96
800	36.70	30.01	25.55
1000	45.88	37.51	31.93
1200	55.06	45.02	38.32
1400	64.23	52.52	44.71
1600	73.41	60.02	51.10
1800	82.59	67.53	57.49
2000	91.76	75.03	63.87
2500	114.71	93.79	79.84

6% USED CARS 6%

Check these examples of low monthly payments on USED cars

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$ 500	$ 45.20	$ 30.96	$23.85
800	71.80	49.19	37.88
1000	89.53	61.33	47.24
1200	107.26	73.48	56.59
1400	124.99	85.63	65.95
1600	142.72	97.78	75.30
1800	160.45	109.92	84.66
2000	178.18	122.07	94.02

18 and 24 Months on late models

NASHVILLE BANK

WHEN YOU SEE ONE YOU WANT, SEE
NASHVILLE BANK AND TRUST COMPANY

You'll drive a bargain if your car is financed through us.
Our low bank rates mean extra savings for you.
What's more, you can expect fast service without red tape.
And buy your insurance thru the agent of your choice.
Convenient repayment plans, too.

5% NEW CARS 5%

Amount to be financed	24 Monthly payments of only	30 Monthly payments of only	36 Monthly payments of only
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6% USED CARS 6%

Check these examples of low monthly payments on USED cars

Amount to be financed	12 Monthly payments of only	18 Monthly payments of only	24 Monthly payments of only
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1600	142.72	97.78	75.30
1800	160.45	109.92	84.66
2000	178.18	122.07	94.02

18 and 24 Months on late models

NASHVILLE BANK AND TRUST COMPANY

MEMBER FEDERAL DEPOSIT INSURANCE CORPORATION

TWO LOCATIONS

315 UNION ST. and 1125 MURFREESBORO ROAD

In United States District Court

Plaintiff's Exhibit No. 549

Law Offices
Farris, Evans & Evans

Frank M. Farris, Jr.
Thomas M. Evans
James Clarence Evans
James L. Roberts
Thomas E. Watts, Jr.

ALpine 5-3511
Third National Bank Building
Nashville 3, Tennessee

June 4, 1964

Mr. S. H. Hunt
Senior Vice President
Third National Bank
Nashville, Tennessee 37219

Re: Proposed merger—Third National Bank and Nashville Bank and Trust Company

Dear Mr. Hunt:

Although the application did not require the Banks to furnish a detailed analysis of the trust business of the two Banks to be merged as compared with the trust business of competitors, we have made an effort to compile some information on the subject.

Since we do not know the amount of trust assets managed by the competitor Banks we thought one of the ways to measure the amount of competition in this field would be to compile a study of the number of officers and employees of each Bank. We find that First American National Bank has eight officers and twenty-four employees; Commerce Union Bank has six officers and ten employees; Nashville Bank and Trust Company has six officers and sixteen employees, and Third National Bank has eight officers and nineteen employees engaged in the trust departments of these respective institutions. On the basis of the numbers of officers and employees it would appear that after the merger First American National Bank and Commerce Union Bank will obviously be in a position to provide intense competition in this particular field.

However, a more revealing set of figures was produced from the Courthouse records. We caused a study to be

made of all appointments in the Probate Court during the year 1963. Out of a total of 871 appointments, all Nashville Banks combined provided only 69 or a total of 7.9% indicating that more than 92% of the Probate cases in this County during 1963 were handled outside the banking system. The break-down on this is as follows:

Bank Appointments	Wills	Adm.	Agent	Total
Third National Bank	14	2	3	19
Nashville Bank & Trust	7	2	1	10
First Amer. Natl. Bank	21	6	1	28
Commerce Union Bank	6	1	0	7
Other (Whites Creek and Citizens & Savings)	3	2	0	5
Total	51	13	5	69

of the 69 appointments			
	Third National Bank got	28%	42%
	Nashville Bk. & Trust	14%	
	First Amer. Natl. Bk.	41%	
	Commerce Union Bk.	10%	
	Other	7%	
		100%	

We think these figures clearly indicate (1) that the separate field of Probate appointments should not be considered a relevant market; and (2) that in the field of trust administration substantial competition to the resulting bank will exist both within and without the banking system. On this point it is also worthy of note that a number of substantial trust accounts in this area such as the Endowment Fund of Vanderbilt University, the Pension Trust of the TVA employees, are handled by trust institutions in the larger cities of the north and east, whereas a bank with a little larger staff would have a chance to keep at home trust business which is now leaving our community.

Very truly yours, Frank M. Farris, Jr.

FMF, Jr./do

Enclosure—extra copy of letter

Blind copies to: Mr. Sam M. Fleming, Mr. Henry W. Hooker, Mr. John J. Hooker, Jr.

In United States District Court

Plaintiff's Exhibit No. 550

Interrogatory No. 11. For each class of trust department accounts, designated in Interrogatory #10 and offered by either Third National or NB&T specify, respectively, the commissions, fees, or service charges applicable as of December 31, 1963, and describe any changes therein since January 1, 1960; for instances where a standard schedule of charges is not adhered to, describe the manner in which charges are determined.

Answer to Interrogatory No. 11.

11. A. Listed below are the commissions, fees, or service charges applicable as of December 31, 1963 at Third National:

(1) (a) Trusts—see schedule
(b) Agency—same as above
Escrow and custodian—Fee based on work to be done and responsibility involved.

(2) (a) Bond or debenture issue—$1.00 per $1,000. on issuance and $1.00 per $1,000. annually subject to size of issue and denominations of bonds.
(b) Paying agencies—1.00 per bond and 5¢ per coupon on bonds and coupons paid.
(c) Depositories and other corporate accounts—Fee based on work to be done and responsibility involved.

(3) Transfer Agency Accounts—see schedule.
(4) Registrar—Flat fee of 175.00 plus .15 per certificate.
(5) Common Trust Fund—no charge.

As to all categories above, whereas standard schedule was not adhered to, changes were determined in discretion of trust department officers. There have been no changes to this schedule since January 1, 1960.

Trustee Under Will or Agreement

Acceptance Fee

When bank is asked to act as Successor Trustee or as Trustee under a testamentary trust where bank did not act as Executor, an acceptance fee of 1% may be charged, depending upon the circumstances.

Ordinary Services

A. For the usual services involved in acting as Trustee under will or agreement, the annual fee shall be based upon $\frac{4}{10}$ of 1% of the fair market value of the principal, said fee charged to income or principal, or divided at the discretion of the Trustee; or in any manner as may be directed by the terms of the instrument.

B. In addition to the above, a special service charge of ½ of 1% will be made for handling real estate mortgages.

Extraordinary services

When unusual services occur, additional compensation based on the work and responsibility involved will be charged. Some of such services are as follows:

A. Special supervision of a controlling interest in a corporation, or such a substantial interest as would require similar attention.

B. Participation in the operation or settlement of a partnership or proprietorship.

C. The liquidation of a business.

D. Special services required in management, sale or leasing of real estate. Any such fees shall not be in excess of those prescribed by the Nashville Real Estate Board.

E. The conduct of litigation involving the estate.

F. Special personal services to beneficiaries.

Minimum Annual Fee

A minimum annual fee of $100 will be charged.

Distribution Charge

1% per thousand on the first $250,000
¾% per thousand on the next $250,000
½% per thousand on all over $500,000

Co-Trustee

The same fee will be charged as when the bank acts alone.

Executor or Administrator

Ordinary Services

For the usual services involved in administering an estate, the Third National Bank will charge the following fees:

A. A fee upon the fair market value (as determined for Federal Estate Tax assessment) of the corpus of the estate, this fee to be computed as follows:

5% on the first $20,000
4% on the next $80,000
3% on the next $200,000
2% on the next $700,000
1½% on all over $1,000,000

(If estate is $100,000 or more, 4% on the first $100,000)

B. An additional fee of 5% of gross income collected during the period of administration.

C. In event substantial property passes outside the will under joint survivorship provisions—and such property is included in the estate for tax purposes—then a reasonable fee may be charged for the services rendered in connection with such property.

Extraordinary Services

When unusual services are required in the administration of an estate, additional compensation based on the work and responsibility involved will be charged. Some of such services are as follows:

A. Special supervision of a controlling interest in a corporation or such a substantial interest as would require similar attention.
B. Participation in the operation or settlement of a partnership or proprietorship.
C. The liquidation of a business.
D. The conduct of litigation involving the estate.

Minimum Fee

A minimum fee of $500 will be charged for administering an estate.

Co-Executor or Co-Administrator

When bank acts as Co-Executor or Co-Administrator, fees will be the same as when bank acts alone.

Schedule of Transfer Agent's Fee

Issuance of 250 certificates and maintenance of 250 accounts	250.00	
Maintenance of accounts in excess of 250	.40	each
Issuance of certificates in excess of 250	.40	each
Summaries of Transfers	.25	per page
Stockholders Lists	25.00	each
Dividend Checks	.25	per check
Addressograph Plates	.30	each
Postage, Insurance	.25	each
Posting Transfers made by Co-Agent	.10	each
Postage on Dividend Checks	Actual Cost	

11. B. Listed below are the commissions, fees, or service charges applicable as of December 31, 1963, at the Nashville Bank & Trust Company:

(1). (a) Trusts: 7½% of income, except as to accounts with other rates previously established.

(b) Agency: Same.

Escrow: Only a few escrows—each negotiated on estimated cost.

Custodian: 2½% to 5% of income based on size and activity.

(2) (a) Bond or Debenture issues—$.75 per $1000.

(b) Paying Agencies: $100 per year plus 10¢ per coupon.

(c) Depositories and other Corporate Accounts: Each quoted individually based on estimate of cost.

(3) Transfer Agencies: $150 minimum per year covers 200 certificates—additional certificates at 50¢ each plus mailing, insurance, and out of pocket expense.

(4) Registrar: Minimum $250.00 per year pays for 500 certificates, 10¢ per certificate over, Notification to Co-Reg. per year $150.

(5) Common Trust Funds: No charge.

As to all above, where standard schedule was not adhered to, charges were determined in discretion of trust department officers. There have been no changes to this schedule since January 1, 1960.

In United States District Court

Plaintiff's Exhibit No. 553

Memorandum to: Charles W. Cook, Jr.
From: W. Joe Diehl, Jr.
Date: April 14, 1965
Re: Question No. 28: (Specify the amounts of money allocated by Third National and NB&T, respectively, during each of the years 1961 through 1963, for the new business departments at each Institution.)

During the years 1961 through 1963, neither the Third National Bank nor the Nashville Bank and Trust Company had a budget system which allocated funds for the specific purpose of new business. We have figures which show the amount spent on new business and business development, both directly and indirectly for those years.

The advertising expense at both institutions was entirely used for new business and business development. Travel and entertainment are in the same category with the exception of funds spent on education of officers and servicing of bad debts. These two items represent the direct expense of the New Business Departments.

It is very difficult to determine the exact amount which was expended for new business since in both the Third National Bank and the Nashville Bank and Trust Company it was the duty of each officer to allocate a portion of his time to new business. The amount of time in each individual case naturally varies. Included in the figures that we present to you as "pro rated expense" are salaries of officers based on the time spent in new business, rent for space occupied by the New Business Department, salaries of the supporting employees, and miscellaneous expenses incurred. The total of these expenditures represents a fair approximation for each institution of its new business expense during 1961-63.

Third National Bank
New Business Expenditures

	1961	1962	1963
Advertisement	$182,131	$232,203	$208,699
Travel & Entertainment	151,209	164,664	139,608
Total Direct Expenditures	333,340	396,867	348,307
Pro Rated Expense	138,298	149,708	162,867
Total Expense	$471,638	$546,575	$511,174

Nashville Bank & Trust Company
New Business Expenditures

	1961	1962	1963
Advertisement	$45,328	$ 46,248	$42,000
Travel & Entertainment	4,023	7,592	5,486
Total Direct Expenditures	49,351	53,840	47,486
Pro Rated Expense	44,970	47,673	49,123
Total Expense	$94,321	$101,513	$96,609

In United States District Court

Plaintiff's Exhibit No. 566

Interrogatory No. 30. Identify and locate all advertising firms employed by Third National and NB&T, respectively, and each publication or broadcasting company which carried the advertising referred to in the preceding interrogatory.

Answer to Interrogatory No. 30.

30. During the years 1962 and 1963, the Third National Bank only employed the advertising services of Savage, Stanford, Hamilton & Kerr, Inc. located in the Third National Bank Building, Nashville, Tennessee.

The Third National Bank utilized the following media for its advertising program:

Newspapers

"Nashville Tennessean"
"Nashville Banner"
"Donelson Dairy"
"The Observer"
"The Trade and Labor News"
"West Nashville News"
"Community News"

Magazines

"Nashville Magazine"
"American Banker"
"Tennessee Banker"
"Mid-Continent Banker"
"Southern Banker"
"Finance"
"Trusts and Estates"
"Mississippi Banker"
"Kentucky Banker"

Radio

WSM
WSIX
WMAK
WLAC
WENO
WLWM—1963 only
WFMB

TV

WSM
WSIX
WLAC

Other

R. L. Polk City Directory
R. L. Polk Suburban Directory
Southern Bell Telephone Directory
R. L. Polk Bank Directory
Rand McNally Bank Directory
American Bank Directory
Southern Bank Directory

Agencies

Buford Lewis Advertising Agency
R. G. Fields Advertising Agency
Bill Walker & Associates
Andrews, Dillon & Walker
The Purse Company, Chattanooga, Tennessee.

Media

Nashville Banner & Tennessean
Nashville Record
W.S.M. T.V. & Radio
W.L.A.C. T.V. & Radio
Outdoor Display
WSIX T.V. & Radio

Total 1962	$40,783.50
Total 1963	43,628.79

Information compiled by: H. C. Buquo, Vice President, Nashville Bank and Trust Office, Third National Bank

In United States District Court

Plaintiff's Exhibit No. 567

Interrogatory No. 29. Specify with regard to Third National and NB&T, respectively, for the years 1962 and 1963, total expenditures for the following:

a. Newspaper and magazine advertising;
b. Radio and television commercials;
c. Direct mail advertising (including copy sent out with monthly statements);
d. Personal solicitation;
e. Billboards and card advertisements; and
f. Other forms of business solicitation.

Answer to Interrogatory No. 29.

Third National Bank
In Nashville

		1962	1963
29. a.	Newspaper	$37,483.00	$30,044.00
	" (Art & Production)	9,242.00	10,785.00
	Magazine (Trade Papers)	9,998.00	11,200.00
	" (Art & Production)	3,812.00	3,314.00
	Total	$62,078.00	$53,800.00
b.	Radio	$21,177.00	$22,376.00
	Television	63,208.00	52,390.00
	" (Art & Production)	3,345.00	2,352.00
	Total	$87,730.00	$77,118.00
c.	Direct Mail	$17,058.00	$ 4,824.00
d.	Personal Solicitation	—	—
e.	Billboards	$20,989.00	$20,264.00
	Car Cards	360.00	1,560.00
	" " (Art & Production)	177.00	143.00
	Total	$21,526.00	$21,967.00
f.	Other forms of Business Solicitation	$43,402.00	$50,615.00

Interrogatory No. 29 continued (with regard to Nashville Bank and Trust Company)

A.	Newspaper 1962	$11,938.31
	Newspaper 1963	11,805.81
B.	Radio & T.V. 1962	19,861.25
	Radio & T.V. 1963	22,555.17
C.	Direct Mail 1962	4,754.74
	Direct Mail 1963	4,555.81
D.	Personal Solicitation 1962	1,325.00
	Personal Solicitation 1963	1,474.00
E.	Billboards 1962	1,890.00
	Billboards 1963	1,890.00
F.	(Lobby Displays 1962)	1,014.26
	(Matches etc. 1963)	1,348.26

In United States District Court

Plaintiff's Exhibit No. 577

Dun & Bradstreet Report

Rating
Unchanged
OR 30 MAR 19 1964
N Q

Third National Company
170 4th Ave N
Nashville Tenn

Under Investigation Further Report Will Follow

D. W. Johnston, Pres
R. E. Myers, V Pres & Mgr
S. M. Fleming, V Pres
D. F. Houser, Sec & Treas
Directors: The officers with Walter Diehl.

History

This is a Tenn. corporation chartered 1929, to operate a mortgage department for the Third National Bank. The capital stock of the corporation, is owned by three trustees, who are the principal officers of Third National Bank. The trustees all hold this stock for Third National Bank.

D. W. Johnston, executive Vice President of Third National Bank, R. E. Myers, manager of this department and has been with the corporation for the past 18 years, S. M. Fleming, President of Third National Bank, while D. F. Houser, is Vice President for Third National Bank.

Third National Bank, Nashville, Tenn., was organized 1927. It is a member of the Federal Reserve System, and is a commercial bank. A statement of Sept. 30 1963, showed a capital of $6,000,000, surplus of $14,000,000, and profits $1,526,345. Close inter-company relations exist between subject and Third National Bank. Third National Bank has just announced the acquisition of the capital stock of Nashville Bank & Trust Co., through a transfer of capital stock. This is subject to the approval of the comptroller of currency.

Operation

Subject operates the mortgage loan department, making mortgage loans, on improved real estate in Nashville, Tenn. It consists of mortgages on institutional, commercial, industrial, and residential property. Mortgages outstanding, are in excess of $2,000,000. 5 employees.

Finance

On Mar 17 1964, R. E. Myers, deferred financial statement, stating that he would have to obtain permission from the trustees to issue a statement. That permissions has not yet been obtained.

Due to its closeness with Third National Bank, little financial information could be developed on this closely affiliated corporation. It is known that it has mortgages on book in excess of $2,000,000. Others were of the opinion that it has adequate cash balances to properly finance operations, and has little, if any, indebtedness outstanding. Operations reported profitable.

Trade

The nature of this business is such to require little, if any, unsecured credit. Miscellaneous obligations have been retired promptly.
3-19 (12 40)

In United States District Court

Plaintiff's Exhibit No. 581

Interrogatory No. 5. State the name, address, and business of deposit accounts in NB&T which, according to the Application filed with the Comptroller of the Currency (page 88) comprised the "approximately 30%" of NB&T's deposits attributable directly or indirectly to the Hill interest in NB&T. Indicate the type of account and an approximate average balance thereof for 1963.

a. State the factual basis for the assertion that these accounts are attributable directly or indirectly to the Hill interest.

b. With respect to the customers listed in response to this interrogatory indicate those who withdrew their business in whole or in part from NB&T because of the sale of the Hill Company interest in NB&T. In each instance state:

   (1) The dollar amount withdrawn and the date thereof;

   (2) The factual basis for the assertion that the withdrawal was attributable to the sale of the Hill Company interest in NB&T.

Answer to Interrogatory No. 5.

A. In a very real sense, it may be said that 100% of the deposits of the Nashville Bank and Trust were attributable directly or indirectly to the Hill interest. Mr. H. G. Hill, Sr. assumed absolute control of the Nashville Bank and Trust during the crises of 1933. Without his guidance, the injection of his capital, and his widely held reputation of unquestioned integrity, it is doubtful that the Nashville Bank and Trust could have survived. Under both Mr. Hill, Sr. and Mr. Hill, Jr., the Nashville Bank and Trust has been known as "Mr. Hill's bank". This association of the Nashville Bank and Trust with the Hill interests provided the reputation for sound and conservative banking which was instrumental in attracting and holding deposits. Cer-

tain accounts are, however, identifiable directly or indirectly with the Hill interest. Following is a list by name, address, business, type of account, relationship with the Hill interest, and approximate average balance for 1963 of deposit accounts attributable directly or indirectly to the Hill interest in Nashville Bank and Trust. This list totals $16,363,276 or *37.4%* of the average daily deposits of Nashville Bank and Trust during 1963, which were $43,776,372. Where more than one relationship with the Hill interest exists, the account is listed under the most pertinent category.

1. The factual basis for the assertion that the following accounts are attributable directly or indirectly to the Hill interest is that they are accounts maintained by the H. G. Hill family or the H. G. Hill Company. These average balances total $2,876,036.

Alloway Brothers Company
P.O. Box 238
Nashville, Tennessee

Meat Processors
W. C. Oldham, President
Checking—$10,000

Edith Caldwell, Inc.
1819-21 Avenue South
Nashville, Tennessee

Dress Shop
Checking—$3,600

Wentworth Caldwell Company
4009 Elkins Avenue
Nashville, Tennessee

Wholesale Grocery
Checking—$5,000

H. G. Hill Company
500 Second Avenue North
Nashville, Tennessee

Retail Grocery Chain
Checking—$1,650,000

H. G. Hill Realty Company
500 Second Avenue North
Nashville, Tennessee

Real Estate Holding Company of The H. G. Hill Company
Checking—$140,000

Aubrey O. Maxwell
91 Franklin Street
Nashville, Tennessee

Checking—$1,000

Womack's (Special)
314 Van Buren
Nashville, Tennessee

Food Stores
Checking—$300

Elsie Caldwell Buntin
115 Jackson Boulevard
Nashville, Tennessee

Savings—$19,000
Checking—$813

Horatio Buntin
Park Road Apartments
3314 West End Avenue
Nashville, Tennessee

Savings—$10,000
Checking—$13,382

Anne N. Caldwell

Savings—$4,000

Frances Hill Caldwell
Harding Road
Nashville, Tennessee

Savings—$5,000
Checking—$20,000

Wentworth Caldwell, Jr.
101 Hillwood Drive
Nashville, Tennessee

Savings—$9,000
Checking—$441

Elizabeth Figgins
Nashville Bank and Trust Office
Nashville, Tennessee

Savings—$1,500
Checking—$500

May Caldwell Flintoff
6004 Hickory Valley Road
Nashville, Tennessee

Savings—$2,500
Checking—$1,000

Mrs. Ann Caldwell Granbery
725 Darden Place
Nashville, Tennessee

Savings—$7,000
Checking—$500

Horace Hill Granbery
725 Darden Place
Nashville, Tennessee

Savings—$1,000

James Wentworth Granbery
725 Darden Place
Nashville, Tennessee

Savings—$800

William L. Granbery, Jr.
725 Darden Place
Nashville, Tennessee

Savings—$800

Mrs. Kate Hill Green
1407 Grandview Drive
Nashville, Tennessee

Savings—$4,000
Checking—$3,000

Mrs. George Hill Gulliver

Savings—$800

Mr. or Mrs. John B. Hardcastle
5921 Long Meadow Road
Nashville, Tennessee

Savings—$10,000
Checking—$200

Mrs. Lucy Hill High
1112 Graybar Lane
Nashville, Tennessee

Savings—$5,500
Checking—$1,800

Mr. H. G. Hill, Jr.
500 Second Avenue South
Nashville, Tennessee

Savings—$370,000
Checking—$30,000

Mrs. H. G. Hill, Jr.
4820 Post Road
Nashville, Tennessee

Savings—$60,000
Checking—$5,000

Mrs. Mamie Wilson Hill
101 Hillwood Drive
Nashville, Tennessee

Savings—$39,000
Checking—$36,000

Mrs. Frances Caldwell Jackson
3805 Vine Ridge Drive
Nashville, Tennessee

Savings—$1,500
Checking—$500

Frances Hill Jackson
5805 Vineridge Drive
Nashville, Tennessee

Savings—$1,500

Harold Edward Jackson, III
5805 Vineridge Drive
Nashville, Tennessee

Savings—$1,000

Mrs. Clyde A. Keltner
Forrest Park Avenue
Nashville, Tennessee

Savings—$1,000
Checking—$500

Mr. Clyde A. Keltner
500 Second Avenue North
Nashville, Tennessee

Checking—$5,000
Savings—$6,000

Mrs. Donald MacDonald
3803 Harding Road
Nashville, Tennessee

Checking—$5,000
Savings—$10,000

Aubrey Maxwell
110 Second Avenue North
Nashville, Tennessee

Savings—$1,000
Checking—$10,000

Mr. Shade Murray or Mrs. May Buntin Murray
115 Jackson Boulevard
Nashville, Tennessee

Savings—$100,000
Checking—$6,000

Mrs. Lucy Oldham or W. C. Oldham
1816 Boscobel Street
Nashville, Tennessee

Savings—$26,000

Mrs. Elizabeth Hill Penick
333 Walnut Street
Nashville, Tennessee

Savings—$70,000
Checking—$100,000

George Lawrence Sain
157 Kenner Avenue
Nashville, Tennessee

Savings—$700

Mr. or Mrs. George T. Sain
215 Blanton Avenue
Nashville, Tennessee

Savings—$16,000
Checking—$1,500

Wade Johnson Sain
157 Kenner Avenue
Nashville, Tennessee

Savings—$600

Wade Sain
945 West Eastland Avenue
Nashville, Tennessee

Savings—$6,000
Checking—$3,000

Stephen Thomas Sain
157 Kenner Avenue
Nashville, Tennessee

Savings—$1,000

William Louise Sain
157 Kenner Avenue
Nashville, Tennessee

Savings—$1,000

Mrs. Eliza Hill Womack

Savings—$800

T. H. Womack
Murfreesboro Road
Nashville, Tennessee

Savings—$19,000
Checking—$3,000

2. The factual basis for the assertion that the following accounts are attributable directly or indirectly to the Hill interest is that they are accounts of companies formerly owned by the Hill interests. These average balances total $152,255.

Guaranty Title and Trust Company
c/o J. A. Beadles
First American National Bank
Nashville, Tennessee

Real Estate Title Insurance
Checking—$2,255

Guaranty Title Company
A Division of Kansas City Title Insurance Company
235 Third Avenue North
Nashville, Tennessee

Real Estate Title Insurance
Checking—$130,000

Southland Mill and Elevator Company
1500 Third Avenue North
Nashville, Tennessee

Flour Milling
Checking—$20,000

3. The factual basis for the assertion that the following accounts are attributable directly or indirectly to the Hill interest is that they are accounts of active, retired, or former employees of the H. G. Hill interests. These average balances total $520,647.

The Nashville Company
#9 Belle Meade Plaza
Nashville, Tennessee

George Volkert and Fred Webber Cafeteria
Checking—$10,000

Bert Bacherig or Helen Bacherig
3734 Whitland Avenue
Nashville, Tennessee

Savings—$36,500
Checking—$432

J. J. or Mary Barrow
707 Demonbruem
Nashville, Tennessee

Savings—$10,000
Checking—$80

J. W. Billington
500 Second Avenue North
Nashville, Tennessee

Savings—$7,000
Checking—$9,700

Mr. or Mrs. Stanley Brumfield
Nashville Bank and Trust Office
Nashville, Tennessee

Savings—$2,000

Marion S. Buquo or Mrs. John Hill McAlister
5960 Sedberry Road
Nashville, Tennessee

Savings—$5,000
Checking—$35

Mr. or Mrs. James E. Covington
Emery Drive
Donelson, Tennessee

Savings—$4,000
Checking—$2,000

M. E. Derryberry, III
117 Clardon Avenue
Nashville, Tennessee

Savings—$36,000

Mrs. E. C. Duke
Route 2
Brentwood, Tennessee

Savings—$1,000
Checking—$1,000

William O. Lee
244 Antioch Road
Nashville, Tennessee

Savings—$11,000

Ralph E. Lewis or Mary E. Lewis
3010 West End Avenue
Apartment C-6 Jacksonian
Nashville, Tennessee

Savings—$7,500
Checking—$500

Mrs. Katherine W. McNeilly
129 Alton Road
Nashville, Tennessee

Savings—$3,000
Checking—$100

W. W. McNeilly or Jean Woods McNeilly
715 Lynwood Boulevard
Nashville, Tennessee

Savings—$1,000
Checking—$300

Mrs. Glen Moore
c/o Mrs. L. P. Thweatt
2918 Campbell Road
Nashville, Tennessee

Savings—$800
Checking—$200

Mrs. Murray Thweatt Harris
c/o Mr. L. P. Thweatt
500 Second Avenue North
Nashville, Tennessee

Savings—$30,000

Mr. T. G. Parham
801 East 12 Street
Chattanooga, Tennessee

Savings—$20,000

Fannie Rogers
Nashville Bank and Trust Office
Nashville, Tennessee

Savings—$4,000
Checking—$500

Mildred R. Sory
c/o Nashville Bank and Trust Company
Nashville, Tennessee

Savings—$1,500
Checking—$500

Julius T. Terry or Goochie J. Terry
127 Blackburn Drive
Nashville, Tennessee

Savings—$4,000
Checking—$1,000

Mr. and Mrs. Albert H. Thomas
Bellevue
Tennessee

Savings—$1,500
Checking—$1,000

L. P. Thweatt
500 Second Avenue North
Nashville, Tennessee

Savings—$33,000
Checking—$20,000
CD—$150,000

Mrs. L. P. Thweatt
207 Lynwood Boulevard
Nashville, Tennessee

Savings—$15,000
Checking—$1,000

Mr. or Mrs. D. H. Vardell
1338 Kenwood Drive
Nashville, Tennessee

Savings—$10,000
Checking—$2,500

Alma S. Webb

Savings—$15,000

J. D. Williams
764 Greeley Drive
Nashville, Tennessee

Savings—1,500
Checking—$500

F. B. Young, Jr.
Nashville Bank and Trust Office
Nashville, Tennessee

Savings—$7,500
Checking—$1,000

F. B. Young, III
172 Woodmont Boulevard
Nashville, Tennessee

Savings—$500

4. The factual basis for the assertion that the following accounts are attributable directly or indirectly to the Hill interest is that they are tenants of the H. G. Hill Company or the H. G. Hill Realty Company and the accounts were solicited on that basis. These average balances total $20,500.

Belle Meade Drugs
Harding Road and White Bridge Road
Nashville, Tennessee

Drug Store
Checking—$2,500

Blankship Drugs
Hillsboro Road
Nashville, Tennessee

Drug Store
Checking—$2,000

Joseph Frank and Son
Arcade P.O. Box 2505
Nashville, Tennessee

Men Clothing
Checking—$1,000

Robert Teltlebaum
1057 Lynwood Boulevard
Nashville, Tennessee

Loveman's
Savings—$15,000

5. The factual basis for the assertion that the following accounts are directly or indirectly attributable to the Hill interest is that they are accounts of individuals, their families or interests, which were close business associates of Mr. H. G. Hill, Sr. or Mr. H. G. Hill, Jr. These average balances total $1,860,903.

The Cain-Sloan Company
Fifth and Church
Nashville, Tennessee

Department Store
Checking—$10,000

Cumberland Shoe Corporation
College Grove
Tennessee

Shoe Manufactoring
Checking—$1,000

Life and Casualty Insurance Company of Tennessee
Trustee for Company Retirement Plan

CD—$350,000

Richards, Scott, and Lyle
Nashville Trust Building
Nashville, Tennessee

Managing General Agents
General Insurance
Checking—$200,000

Florence Camille Cheek
3613 Trimble Road
Nashville, Tennessee

Savings—$2,000

Mrs. Helen P. Cheek
411 Westview Avenue
Nashville, Tennessee

Savings—$12,000
Checking—$4,303

Herbert Farrell Cheek
Deer Park Circle
Nashville, Tennessee

Savings—$180,000
Checking—$30,000

Hettie Cheek

Savings—$50,000

J. D. Picksley Cheek, Jr.
3613 Trimble Road
Nashville, Tennessee

Savings—$12,000

Mr. or Mrs. James H. Cheek, Jr.
221 Evelyn Avenue
Nashville, Tennessee

Savings—$20,000

James Howe Cheek, III
221 Evelyn Avenue
Nashville, Tennessee

Savings—$8,500

Mr. Newman Cheeck
Nashville Bank and Trust Building
Nashville, Tennessee

Checking—$110,000

Owsley R. Cheek
1533 Broadway
Nashville, Tennessee

Savings—$5,000
Checking—$2,000

Mr. Robert S. Cheek
411 Westview Avenue
Nashville, Tennessee

Checking—$10,000
Savings—$10,000

Robert S. Cheek, II
3622 Trimble Road
Nashville, Tennessee

Savings—$20,000

Will T. Cheek, Jr.
712 Enquirer Avenue
Nashville, Tennessee

Savings—$25,000
Checking—$3,000

Mr. John H. Cheek
Nashville Bank and Trust Company
Nashville Bank and Trust
Nashville, Tennessee

Checking—$25,000

Logan Eisele, Jr.
5715 North 55 Place
Paradise Valley Road
Phoenix, Arizona

Savings—$100,000
Checking—$400,000

Sophia Frank
Continental Apartments
Nashville, Tennessee

Savings—$100,000
Checking—$16,000

T. Graham Hall
1516-16 Avenue South
Nashville, Tennessee

Savings—$21,000
Checking—$100

L. G. Noel Memorial Foundation
Dr. Oren A. Oliver, President or Dr. Wayne L. McCulley, Secretary-Treasurer
Brown Building
Cleveland, Tennessee

Savings—$8,000

Mrs. Florence Cheek Lamb
Woodmont Boulevard
Nashville, Tennessee

Savings—$3,000
Checking—$4,000

Mutual Benefit Plan for Employees of Genesco, Inc.

Savings—$54,000

Mrs. Helen Nelson Payne
5809 Vineridge Drive
Nashville, Tennessee

Savings—$3,000

Helen Forker Thomas
904 Forrest Avenue
Johnson City, Tennessee

Savings—$18,000

Honor Walker
402 Sterling Court
Nashville, Tennessee

Savings—$26,000
Checking—$3,000

Mrs. J. Morgan Wilkerson, Jr.
Knollwood Drive
Nashville, Tennessee

Savings—$15,000

6. The factual basis for the assertion that the following accounts are directly or indirectly attributable to the Hill interest is that the balances in these accounts are made up of deposits to these accounts made by the Hill interests themselves or of companies or individuals whose accounts are directly or indirectly attributable to the Hill interest. These average balances total $4,500,000.

Nashville Bank and Trust Company Trust Department
315 Union Street
Nashville, Tennessee

Checking—$1,500,000

State of Tennessee
c/o State Treasurer
State Capitol
Nashville, Tennessee

Checking—$2,000,000

War Loan and Tax Account
General Ledger
Nashville Bank and Trust
Nashville, Tennessee

Checking—$1,000,000

7. The factual basis for the assertion that the following accounts are attributable to the Hill interest is that they are accounts of eleemosynary institutions to which the Hill family have been substantial contributors and in most cases have served on the boards of directors. These average balances total $1,262,000.

Children's Museum Association
724 Second Avenue South
Nashville, Tennessee

Museum
Checking—$20,000

The Harpeth Hall School
Hobbs Road
Nashville, Tennessee

Private Girls' School
Checking—$20,000

Hillwood Country Club
Hickory Valley Road
Nashville, Tennessee

Country Club
Savings—$11,000
Checking—$30,000

Hillwood Presbyterian Church (Current Operations)
6220 Hickory Valley Road
Nashville, Tennessee

Checking—$10,000

Junior League of Nashville Reserve Account
Green Hills Drive
Nashville, Tennessee

Savings—$200,000

Meharry Medical College
1005-18 Avenue North
Nashville, Tennessee

Medical School
Checking—$100,000
Savings—$3,000

Nashville Young Men's Christian Association
226 Seventh Avenue North
Nashville, Tennessee

Christian Fellowship
Checking—$15,000

Peabody College for Teachers
21 Avenue South
Nashville, Tennessee

Educational Institution
Checking—$250,000
Savings—$200,000

Vanderbilt University
c/o Bursar's Office
Nashville, Tennessee

Educational Institution
Checking—$364,000

Bill Wilkerson Hearing and Speech Center
19 Avenue South at Edgehill
Nashville, Tennessee

Savings—$25,000

Ryman Auditorium Corporation
c/o D. W. Johnston
Third National Bank
Nashville, Tennessee

Savings—$25,000

8. The factual basis for the assertion that the following accounts are attributable to the Hill interest is that they are significant suppliers of goods or services to the H. G. Hill Company and their accounts were solicited on that basis. These average balances total $5,170,935.

American Bread Company
Murfreesboro Pike
Nashville, Tennessee

Bakery
Checking—$200,000

American Syrup and Preserving Company
434 Houston Street
Nashville, Tennessee

Manufacturing of Jams and Jellies
Checking—$1,300

American Tea and Coffee Company, Inc.
2424 Charlotte Avenue
Nashville, Tennessee

Coffee Roasting and Distributing
Checking—$20,000

American Tire and Recapping Company
5317 Charlotte Avenue
Nashville, Tennessee

Tire Wholesale and Retail
Checking—$16,000

Anthony Pure Milk Company
504 Woodland Street
Nashville, Tennessee

Dairy Processor
Checking—$30,000

Bagwell Preserving Company, Inc.
805-16 Avenue South
Nashville, Tennessee

Manufacturing of Jams and Jelly
Checking—$10,000

Baltz Brothers Packing Company
Elm Hill Pike
Nashville, Tennessee

Meat Packer
Checking—$110,000

Barge, Waggoner, and Sumner
James Robertson Parkway
Nashville, Tennessee

Consulting Engineers
Checking—$20,000

Barksdale, Hudgins, and Leaver, Gilbert and Frank
1316 Nashville Trust Building
Nashville, Tennessee

Attorneys at Law
Checking—$10,000

Beatrice Foods, Inc.
1710 Church Street
Nashville, Tennessee

Ice Cream Manufacturing
Checking—$70,000

Better-Bilt Aluminum Products Company, Inc.
Box 7166
Nashville, Tennessee

Doors, Windows, etc.
Checking—$10,000

Blevins Popcorn Company, Inc.
3098 Charlotte Avenue
Nashville, Tennessee

Popcorn Distributor
Checking—$6,000

Boone Contracting Company
637 Third National Bank Building
Nashville, Tennessee

General Contractor
Checking—$7,000

The Borden Foods Company
350 Madison Avenue
New York, New York

Dairy Products
Checking—$50,000

Bradley Candy Manufacturing Company
701 Murfreesboro Road
Nashville, Tennessee

Candy Manufacturing
Checking—$10,000

Cee-Lect Bean
(Martha White Mills)
Lebanon, Tennessee

Bean Packer
Checking—$20,000

Central Produce Company
600 Third Avenue North
Nashville, Tennessee

Wholesale Produce
Checking—$50,000

Coca-Cola Bottling Works
1527 Church Street
Nashville, Tennessee

Soft Drink Bottler
Checking—$35,000

Coleman Sausage Company
4906 Park Avenue
Nashville, Tennessee

Meat Packer
Checking—$10,000

Colonial Baking Company
2407 Franklin Road
Nashville, Tennessee

Bakery
Checking—$75,000

Colonial Coffee Company
300 Second Avenue South
Nashville, Tennessee

Coffee Roaster and Distributor
Checking—$40,000

Cone Brokerage Company
1506 Eighth Avenue South
Nashville, Tennessee

Food Broker
Checking—$15,000

C. P. Cooney and Brother
Third National Bank Building
Nashville, Tennessee

Food Broker
Checking—$12,000
Savings—$1,500

Cumberland Oil Company
106 Shelby Avenue
Nashville, Tennessee

Petroleum Products Distributors
CD—$10,000

Don's Foods, Inc.
1806 Charlotte Avenue
Nashville, Tennessee

Potato Chip Manufacturing
Checking—$30,000

F & L Bakery
Main Street
Nashville, Tennessee

Cookie Baker
Checking—$7,000

Fenner-Spelman Corporation
106 Shelby Avenue
Nashville, Tennessee

Real Estate Holding Company for Cumberland Oil Company
CD—$10,000

Joe Formosa & Sons
714 Fourth Avenue North
Nashville, Tennessee

Food Distributors
Checking—$11,000

Frito-Lay, Inc.
2912 Sidco Drive
Nashville, Tennessee

Manufacturing Potato Chips, Corn Chips, etc.
Checking—$50,000

Frosty Morn Meats
P. O. Box 391
Clarksville, Tennessee

Meat Packers
Checking—$30,000

General Truck Sales, Inc.
535 Murfreesboro Road
Nashville, Tennessee

G.M.C. Truck Dealer
Checking—$5,000

Gordon Foods
P. O. Box 35, Station D
1510 Algonquin Parkway
Louisville, Kentucky

Potato Chip Distributor
Checking—$5,000

Mrs. Grissom's Salads, Inc.
303 South Second Street
Nashville, Tennessee

Manufacturing of Prepared Salads and Sandwich Spreads
Checking—$30,000

Hobbs Banana Company
722 Fourth Avenue North
Nashville, Tennessee

Banana Distributors
Checking—$50,000

Holt-Drake, General Account
1119 Laurel Street
Nashville, Tennessee

General Contractor
(Joint Venture of W. F. Holt and Sons, Inc.)
Checking—$200,000

W. F. Holt and Sons
1119 Laurel Street
Nashville, Tennessee

General Contractor
CD—$4,200

W. F. Holt and Sons, Inc.
1119 Laurel Street
Nashville, Tennessee

General Contractor
Checking—$100,000

The Home Insurance Company
59 Maiden Lane
New York, New York

Insurance
Checking—$5,000

C. M. Hunt Company
Nashville Trust Building
Nashville, Tennessee

General Insurance
Checking—$75,000

Ideal Baking Company
Murfreesboro
Tennessee

Bakery
Checking—$13,000

Jacobs Packing Company
1416 Adams Street
Nashville, Tennessee

Meat Packing
CD—$75,000
Checking—$5,000

Jersey Farms Milk Service, Inc.
825 Eighth Avenue South
Nashville, Tennessee

Milk Processors
Checking—$10,000

John D. Phipps and Son
757 Brownlee Drive
Nashville, Tennessee

General Contractor and Real Estate Developer
Checking—$5,000

Jones and Miller Company
1104 Division Street
Nashville, Tennessee

Food Broker
Checking—$1,000

Kraft Foods Company
c/o Mr. F. T. Fay
Forest Lane
Garland, Texas

Dairy Products
Checking—$110,000

Lem's Country Kitchen
1808 Buchannan Street
Nashville, Tennessee
Pie and Cake Baker
Checking—$3,000

Market Administrator
Suite 1313
1808 West End Avenue
Nashville, Tennessee
Milk Marketing Administration
Checking—$220,000

Marquette Cement Manufacturing Company
20 North Wacker Drive
Chicago, Illinois
Cement Manufacturing
Checking—$5,000

Mayo Sausage Company
Charlotte Road
Nashville, Tennessee
Meat Packing
Checking—$100

Medlin Realty Company
c/o Leola B. Russell
1717 Hayes Street
Nashville, Tennessee
Real Estate Sales and Development
Checking—$15,000

Merrill Stone Company
14th Floor
L & C Tower
Nashville, Tennessee
Manufacturing Agents
Checking—$15,000

Merrylog Farms Inc.
705 Third Avenue North
Nashville, Tennessee

Egg Producer
Checking—$135

Middle Tennessee Foods, Inc.
3101 Ambrose Avenue
Nashville, Tennessee

Food Distributor
Checking—$10,000

Mike Rose Foods Manufacturing, Inc.
305-11 Avenue South
Nashville, Tennessee

Salad Dressing Manufacturing
Checking—$3,000

Nashville Fruit Exchange Company
623 Jackson Street
Nashville, Tennessee

Produce Distributor
Checking—$1,500

Nashville Gas Company
c/o A. E. Hansen, Asst. Secretary
814 Church Street
Nashville, Tennessee

Gas Service
Checking—$50,000

Nashville Milk Producers, Inc.
2976 Sidco Drive
Nashville, Tennessee

Milk Distributors
Checking—$500,000

National Biscuit Company
425 Clark Avenue
New York, New York

Cracker and Cookie Baker
Checking—$10,000

Neeley Coble Company
425 Sixth Avenue South
Nashville, Tennessee

Trucks
Checking—$500

Neuhoff Packing Company
1307 Adams Avenue
Nashville, Tennessee

Meat Packer
Checking—$70,000

Purity Bakeries, Inc.
1633 Church Street
Nashville, Tennessee

Bakery Products
Checking—$125,000

Purity Dairies
360 Murfreesboro Road
Nashville, Tennessee

Dairy Products
Checking—$100,000
CD—$100,000

Rabold Brokerage Company, Inc.
3202 Belmont Boulevard
Nashville, Tennessee

Food Brokerage
Checking—$5,000

Reddy Brand Packers, Inc.
530 Third Avenue, North
Nashville, Tennessee

Produce Packer
Checking—$15,000

Rock City Ice Cream Company, Inc.
600 McGavock Street
Nashville, Tennessee

Ice Cream Manufacturing
Checking—$1,000

Royal Crown Bottling Company
1401 Broadway
c/o Horace Link Company
Paris, Illinois

Soft Drink Bottling Company
Checking—$150,000

Rudy Sausage Company, Inc.
2607 McGavock Road
Donelson, Tennessee

Meat Processor
Checking—$20,000

Rye and Allen Brokerage Company
1104 Division Street
Nashville, Tennessee

Food Broker
Checking—$500

Henry S. Sawrie Company
81 Franklin Street
Nashville, Tennessee

Food Broker
Checking—$13,600

Sealtest Foods Division National Dairy Products
1401 Church Street
Nashville, Tennessee

Dairy Products
Checking—$530,000

Service Packaging Company
P.O. Box 7193
Nashville, Tennessee

Grocery Packaging
Checking—$8,000

Smith Packing Company
807 Third Avenue North
Nashville, Tennessee

Meat Packer
Checking—$15,300

S. R. Smith, Inc.
306 Main Street
Nashville, Tennessee

Meat Packer
Checking—$15,000

Southern States Paving Company
900-44 Avenue North
Nashville, Tennessee

Paving Contractor
Checking—$134,000

Standard Candy Company
443 Second Avenue North
Nashville, Tennessee

Candy Manufacturing
Checking—$500

Sunshine Biscuit Company
1427 Clark Avenue
St. Louis, Missouri

Cracker and Cookie Manufacturing
Checking—$15,000

Tennessean Newspapers, Inc.
1100 Broadway
Nashville, Tennessee

Newspaper Publishing
CD—$50,000
Checking—$10,000

Tennessee Pipe and Supply Corporation
800-12 Avenue North
Nashville, Tennessee

Plumbing, Heating, and Air Conditioning
Checking—$40,000

Tennessee Reddi-Whip, Inc.
220 Cumberland Circle
Donelson, Tennessee

Food Products
Checking—$3,000
CD—$10,000

Thompson and Green Machinery Company
700 Murfreesboro Road
Nashville, Tennessee

Equipment Dealer
(Common Ownership with General Truck Sales)
Checking—$110,000

Toledo Scale, Division of Toledo Scale Corporation
Attention: Mrs. Edna M. Laird, Telegraph Road
Toledo, Ohio

Scale Manufacturing
Checking—$9,000

United Biscuit Company of America
2945 Foster Crieghton Drive
Nashville, Tennessee

Cracker and Cookie Manufacturing
Checking—$15,000

Vietti Foods, Inc.
701 Bradford Avenue
Nashville, Tennessee

Meat Product Canning
Checking—$4,000

Eli Witt Cigar Company of Tennessee, Inc.
518 Third Avenue North
Nashville, Tennessee

Tobacco Products
Distributor
Checking—$5,000

Fred Wright Construction Company
316-12 Avenue South
Nashville, Tennessee

General Contractor
Checking—$3,000

W.S.I.X, Inc.
441 Murfreesboro Road
Nashville, Tennessee

Radio and TV Stations
Checking—$120,000

Ferriss C. Bailey
200 Hillwood Drive
Nashville, Tennessee

Attorney
Savings—$4,000
Checking—$1,809

Daniel B. Barge, Jr. or Mrs. Daniel Barge, Jr.
816 Kendall Drive
Nashville, Tennessee

Barge, Waggoner, and Sumner
Savings—$1,750
Checking—$8,137

Mr. or Mrs. John M. Barksdale
610 Enquirer
Nashville, Tennessee

Attorney
Savings—$320,000
Checking—$1,000

H. A. Buchi
2506 Westwood Avenue
Nashville, Tennessee

Buchi Plumbing Company
Savings—$11,000
Checking—$4,404

Mr. or Mrs. W. P. Deese
807 Stahlman Building
Nashville, Tennessee

C. M. Hunt Company
Savings—$3,000
Checking—$2,000

Mr. or Mrs. R. J. Dennis
2014 Galbrath Drive
Nashville, Tennessee

Central Parking System
Savings—$23,000

Mr. or Mrs. J. Douglas Doty
4609 Park Avenue
Nashville, Tennessee

S. R. Smith, Inc.
Savings—$8,000

E. Edenfield, Jr. or Mrs. Edward Edenfield, Jr.
6211 Jocelyn Hollow Road
Nashville, Tennessee

Edenfield Electric
Savings—$2,000
Checking—$148,000

J. V. Edenfield
Forrest Hill Apartments
Nashville, Tennessee

Edenfield Electric
Savings—$20,000

Mr. R. Edenfield
1416 Lebanon Road
Nashville, Tennessee

Edenfield Electric
Checking—$63,000

John S. Glenn, Jr.
406 Hillwood Drive
Nashville, Tennessee

John S. Glenn and Associates
Savings—$10,000
Checking—$400

Mr. or Mrs. James F. Holt
1119 Laurel Street
Nashville, Tennessee

W. F. Holt and Sons
Savings—$65,000
Checking—$2,000

C. M. Hunt, Jr.

C. M. Hunt and Company
Savings—$30,000
Checking—$400

Lee Hunt, Special
10 Floor, Nashville Bank and Trust Building
Nashville, Tennessee

C. M. Hunt and Company
Savings—$33,000
Checking—$2,000

Mr. or Mrs. Raymond Krawczyk
6526 Rolling Fork Road
Nashville, Tennessee

Manager Gordons Foods
Checking—$500

Mr. Clitis E. Luther
3000 Charlotte Avenue
Nashville, Tennessee

Manager—Royal Crown Bottling Company
Checking—$1,000

Mr. or Mrs. Bates R. Parman
Apartment 305
Harding House
Nashville, Tennessee

Parman Oil Company
Savings—$8,000
Checking—$500

Alan Rabold by Stanley J. Rabold
701 Newberry Road
Nashville, Tennessee

Rabold Brokerage
Savings—$500

Jim Hugh Reed, III
1512 Broadway
Nashville, Tennessee

Jim Reed Chevrolet
Savings—$5,500

Mike Rose
4023 Dorcua Drive
Nashville, Tennessee

Mike Rose Food Manufacturing Company
Savings—$400

Mr. or Mrs. Sam R. Smith, Sr.
918 Dalebrook Lane
Nashville, Tennessee

S. R. Smith, Inc.
Savings—$15,000
Checking—$1,500

Mr. Billy T. Sumner
c/o Barge, Waggoner, and Sumner
James Robertson Parkway
Nashville, Tennessee

Barge, Waggoner, and Sumner
Checking—$8,000

Francis B. Warfield

Architect
Savings—$9,000

A. M. Weesner
4009 Crestridge Drive
Nashville, Tennessee

Wilson, Weesner, and Wilkins
Savings—$39,000

R. L. Wiles, Trust
J. P. Foster, Trustee
420 Page Road
Nashville, Tennessee

Paty, Womack, and Foster
Savings—$100,000

James Winters or Mrs. Mildred C. Winters
2407 Sterling Road
Nashville, Tennessee

Winters Heating and Air Conditioning
Savings—$18,000

B. With respect to the customers of Nashville Bank and Trust listed above in response to this interrogatory, following is a list of those who withdrew their business in whole or in part from the Nashville Bank and Trust Company or Nashville Bank and Trust Office. This list contains 34 accounts and entails a loss of average balances of approximately $2,000,000. Balances are typically withdrawn not by the drawing of a single check for the total balance, but by not replenishing the account by deposits and allowing the balance to be depleted to a zero balance or a small inactive balance. The loss in average balances is therefore shown by date of last deposit and resulting inactive balances, reduction in average balance, or closing date of account. Where a withdrawal is significant, its date and amount is indicated. The factual basis for the assertion that the withdrawals were attributable to the sale of the Hill Company interest in Nashville Bank and Trust is the fact that the original reason for their doing business at Nashville Bank and Trust no longer exists and there is no other known reason for the withdrawals.

American Bread Company
Last deposit made to checking account August 18, 1964 resulting in inactive balance of $3,760.97

Better-Bilt Aluminum Products Company, Inc.
Checking account closed June 9, 1964.

The Cain-Sloan Company
Checking account closed September 1, 1964 by check of $10,000.

Cee-Lect Bean
Checking account closed May 20, 1964.

Coca-Cola Bottling Works
Checking account closed June 24, 1964.

C. P. Cooney and Brother
Checking account closed August 24, 1964.

Cumberland Oil Company
CD paid $10,000—March 27, 1964.

Don's Foods, Inc.
Last deposit made to checking account January 8, 1965, resulting in inactive balance of $1,771.68.

Fenner-Spelman Corp.
CD $10,000 paid March 38, 1964.

Joe Formosa and Sons
No deposit since March 31, 1964, resulting in inactive balance of $54.36.

Joseph Frank and Son
Checking account closed May 6, 1964.

General Truck Sales, Inc.
Checking account closed September 8, 1964.

Gordon Foods
Last deposit made October 26, 1964 resulting in inactive balance of $3,500.10.

Guaranty Title and Trust Company
Closed August 19, 1964—$2,255.22.

H. G. Hill Company
Average balance in main account reduced since October, 1964, from $1,400,000 to $700,000.

Hobbs Banana Company
Closed March 2, 1965

The Home Insurance Company
Closed September 11, 1964.

Jersey Farms Milk Service, Inc.
Payroll checking account closed January 13, 1965. Regular checking account closed by $40,000 check September 18, 1964.

Kraft Foods Company
Checking account closed by $96,422.76 check September 18, 1964.

Mr. or Mrs. Raymond Krawczyk
Checking account closed February 5, 1965.

Jacobs Packing Company
Checking account closed August 14, 1964.

Lem's Country Kitchen
Regular account balance of $46.67 inactive since December 10, 1964.

Marquette Cement Manufacturing Company
Checking account closed February 25, 1965.

Nashville Gas Company
Checking account closed August 27, 1964.

Nashville Milk Producers, Inc.
Last deposit made August 14, 1964. Account closed December 14, 1964.

Neeley Coble Company
Checking account closed April 3, 1964.

Rabold Brokerage Company, Inc.
Checking account closed January 28, 1965.

Rock City Ice Cream Company, Inc.
Checking account closed February 12, 1964.

Service Packaging Company
Checking account closed December 21, 1964.

Merrill Stone Company
Checking account closed May 15, 1964.

Southern States Paving Company
Checking account closed September 3, 1964.

Standard Candy Company
Checking account closed February 7, 1964.

Eli Witt Cigar Company of Tennessee, Inc.
Checking account closed December 14, 1964.

Womack's (Special)
Checking account closed April 24, 1964.

In United States District Court

Plaintiff's Exhibit No. 588

Interrogatory No. 24. Describe all employee benefits (e.g., hospitalization, accident and life insurance, sick leave, vacations, pension and profit-sharing programs, etc.) offered by Third National and NB&T, respectively, during the year 1963.

Answer to Interrogatory No. 24.

24. The following is a description of the Third National Bank's fringe benefit programs for the year, 1963.

Hospitalization—The Third National Bank provides without cost to the employee a $10,000 Major Medical insurance plan. The plan is offered to all employees under the age of 65 and dependents may be covered at the discretion of the employee. Employee dependent cost is on the basis of $5.50 per month for one dependent; two or more—$6.60 per month. Coverage may be continued by retired personnel; however benefits are cut in half and the retiree pays $10.00 per month for each person covered.

Life Insurance—Plan 1—All employees are eligible who have completed 90 days of continuous service and enrollment is voluntary. The amount of coverage ranges from $2,000 to $18,000 and the amount offered the employee is based on salary. Cost is based upon 50¢ per thousand per month for all employees with less than 5 years of continuous service. For employees with more than 5 years of service, the cost is based upon 25¢ per thousand per month. Coverage may be continued after retirement on the basis of 50¢ per thousand per month. The amount of insurance coverage reduces 10% per year for 5 years, but not below $4,000.

Plan 2—This was a supplement to the bank's original insurance offered and is also based upon salary. Participation is also voluntary after the 90 day waiting period. This plan ranges from $5,000 to $25,000 and cost to the employee is based upon 70¢ per thousand

per month. Minimum coverage is offered to employees whose salary is $3,600 per year and ranges to maximum coverage for employees whose earnings are $20,000 per year and over. The plan may be continued after retirement and the retiree pays 70¢ per thousand per month and coverage is reduced 10% per year for 5 consecutive years; but not below $2,500.

Plan 3—This was an additional plan supplementing Plans 1 and 2. Coverage is offered in the amount of $20,000 only to employees whose annual earnings are $6,000 and over. Cost is on the basis of 50¢ per thousand per month. This plan automatically terminates at retirement date or age 70, whichever is earlier.

Plan 4—This plan is to supplement Plans 1, 2, and 3. Coverage is offered to the officers group only to those who have the title of Assistant Vice President and up. This policy is issued for $20,000 only and is on the basis of $1.25 per thousand per month. Coverage under this plan terminates at aget 70 or retirement, whichever is earlier.

All Third National Bank group life insurance plans contain an accidental death and dismemberment provision. On Plan 2, accidental death and dismemberment is limited to $10,000.

Accidental Death and Dismemberment Plan—Coverage under this plan ranges from $10,000 to $100,000 and an employee's dependent spouse is eligible for one-half of the employee's coverage. Cost of this coverage is borne entirely by the employee and is based upon 65¢ per month for $10,000. The plan terminates upon retirement or at any time the participant ceases to be an active employee.

Vacations—Vacations range from one to three weeks based upon date of employment and length of service. One week's vacation is given to those employees who are enrolled from November 1 to February 28. Two weeks' vacation are allowed for all employees with less than 15 years' service. Three weeks' vacation are

allowed for all employees with 15 years or more. Vice Presidents are allowed three weeks vacation irrespective of length of service.

Bonuses—For the past several years, Third National has paid a Christmas bonus to all officers and employees of 5% or 10% of annual base salary, depending on the employee's length of service. All employees who have completed two years of continuous service are eligible for a 5% bonus. Employees who have completed three years of continuous service or longer are eligible for a 10% bonus. The bonus is not a guaranteed fringe benefit. It is generally approved on a year-to-year basis by the Board of Directors at the December board meeting.

Profit Sharing Retirement Program—Third National provides a profit sharing plan for all officers and employees who have met the eligibility requirements. Participation is voluntary. Contributions to the plan for each participant are limited to 3% of his annual base salary. Contributions to the plan by the bank shall be 10% of profits, not exceeding 15% of total salaries. The general purpose of the plan is to provide for living expenses and maintenance of employees after reaching retirement. Normally, retirement is considered to be age 65; and employees are eligible on the first of the month following their sixty-fifth birthday. The Board of Directors, at its discretion on officers, and the President, in the case of other employees, may request that an employee remain in the service of the bank on a year-to-year basis until the employee reaches the age of 70.

Sick Leave—When it is necessary for an employee to be absent from work due to illness or disabiilty, salary will be continued for a period of time based upon his length of service. Salary continuance ranges from one week to twenty-one months. Eligibility for and limitations and exceptions on the plan are left up to the discretion and judgment of the bank.

24. The following is a description of the Nashville Bank and Trust Company's fringe benefit program for the year, 1963.

Group Hospitalization—Hospitalization insurance was offered to all officers and employees. Major features of the coverage were as follows: $8 per day for hospital room for as many as 70 consecutive days; other hospital charges up to $200 for any one hospitalization; surgical fees listed in the policy pay up to $225 for any one operation. Cost of this insurance for each employee was $1.50 per month with graduated charges for dependent coverage.

Life Insurance—Life coverage was available to all employees in the amount of $5,000 and $10,000 to officers under the age of 65. Cost of the coverage was 60¢ per month per thousand and officer coverage reduced to $5,000 after age 65.

Vacations—Two weeks' vacation was given to all officers and employees with less than 15 years' service and three weeks for those with 15 years or more.

Retirement—All officers and employees were eligible for enrollment in the Nashville Bank and Trust retirement program after completion of 36 months of continuous employment. Normal retirement date was the last day of the month in which an employee reached his sixty-fifth birthday. An employee could continue after age 65 if agreed to by the company; however, no additional years of service beyond age 65 would be credited for pension benefits. Each retired employee was eligible to receive for life an annual pension calculated on the following formula. One and a half percent of his average earnings for the last five years of employment multiplied by the number of years of employment, not exceeding 30 years, less one half of his annual primary social security insurance amount at the date of the retirement. Pension shall be paid monthly from current operating earnings as this plan is not funded.

In United States District Court

Plaintiff's Exhibit No. 589

Interrogatory No. 34. For each of the years 1962 and 1963 state the amount of each pension paid by N B & T and the position held by, and the annual salary of, the recipient at the time of his retirement.

Retired Employees—Nashville Bank and Trust Company

Name	Position	Retired	Salary	1962 Pension	1963 Pension
J. W Jakes.	Vice. Pres (Investment Officer)	1- 1-61	$8,700.00	$2,521.00	$2,521.00
Jimmie Barrow	R. E. Clerk	8- 1-60	3,600.00	1,155.17	1,155.37
Charlie Doss	Porter	8-30-58	2,080.00	630.25	630.25
Mary D. Hatfield	Security Clerk	6-12-58	3,120.00	1,071.42	1,071.42
Sue Hewgley	Secretarial	4- 1-62	3,720.00	849.60	1,134.45
Louise Hix	Trust Filing Clerk	9-30-63	2,400.00		77.75
Bernece Waltemate	Secretarial	5- 1-62	3,600.00	712.72	1,071.42
M. W. McCord	Building Nightwatchman	June 1954		379.80	379.80
J. T. Irvin	Building Cleaning Supervisor	Records Destroyed		504.20	504.20
Sammie E. Gentry (Deceased)				630.25	25.00
Thomas C. Green (Deceased)				630.25	450.00
W. G. Locke (Deceased)				441.17	70.00
Hattie Lenora Spann (Deceased)				37.50	

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 594

Interrogatory No. 6. For the period January 1, 1961 through August 17, 1964, state the name and address of each applicant who requested a loan from either Third National or N B & T which would have been in excess of the legal lending limit of the bank involved. In each instance, state:

a. The amount of credit requested, and the date of the request;
b. Whether the bank involved furnished any portion of the credit requested in participation with another lender or lenders, and, if so, the name of such lender or lenders, date of loan, and the portion of the total credit supplied by each such participant.

Answer to Interrogatory No. 6.

6A. Before detailing the applicants for credit in excess of the Third National's legal limit it should be mentioned that the officers of Third National have made a practice of keeping the bank's largest customers informed of its legal limit and any changes to it (see samples attached). Additionally, most corporate Treasurers who would be considering the use of Third National's facilities would know from published figures what the legal limit would be. Thus, it is extremely unusual for any firm to request more than a bank's legal limit.

Third National's legal limit has changed as follows since January 1, 1961, at which time it was $1,400,000.

Date	Legal Limit
July 18, 1962	$1,750,000
September 12, 1963	$2,000,000

Listed below are all the customers of Third National who requested in excess of its legal limit from January 1, 1961, to August 17, 1964:

Name and Address	Total Credit *	Date
Bass Compact Homes, Inc. Hopkinsville, Kentucky	$2,500,000 $3,063,785	April 1, 1963 April 23, 1964
J. C. Bradford and Company 424 Union Street Nashville, Tennessee	$2,475,000	June 9, 1964
Capitol Airways, Inc. Berry Field Airport Nashville, Tennessee	$6,227,676	September 13, 1963

The total credit ranged to a high of $6,305,610 on October 2, 1963, and remained above the legal limit of Third National until November 30, 1964.

R. M. Crichton P. O. Box 180 Nashville, Tennessee	$2,932,409 $2,968,409 $3,013,409 $3,113,409 $3,205,779	January 10, 1963 April 9, 1963 July 5, 1963 October 23, 1963 January 3, 1964
Dobson & Johnson, Inc. Third National Bank Building Nashville, Tennessee	Note 1	
Hassenfeld Bros., Inc.	$1,450,000	July 11, 1961
Empire Pencil Company Division Shelbyville, Tennessee	$1,550,000 $1,650,000 $1,900,000 $1,800,000 $1,950,000	July 20, 1961 May 17, 1962 August 20, 1962 May 13, 1963 June 24, 1963
W. M. Jarman, Trustee 111 7th Avenue, North Nashville, Tennessee	$9,500,000	July 8, 1964

Note 1: Dobson & Johnson, Inc., Kimbrough-Kavanaugh & Associates and Murphree Mortgage Company are all in the business of brokering mortgages and handling construction credit for contractors. As the principal bank of account for these firms, Third National handles credit under two categories—specifically, warehousing of mortgages and loans for construction purposes. Prior to January 1, 1961, all three of these firms had reached such a volume in their operations that they were continuously using credit in excess of Third National's legal limit. To state a date that a specific request was made would be virtually impossible as the balance outstanding varied daily. Indeed, it would be more accurate to say that Third National agreed to handling credit in excess of its legal limit when it agreed to become the principal bank for these three firms.

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* Maximum borrowings which were attained on date shown.

Name and Address	Total Credit *	Date
Kimbrough Kavanaugh & Associates successors to Kimbrough-Phillips Co. and The Southern Trust Company of Nashville 416 Union Street Nashville, Tennessee	Note 1	
Malone & Hyde, Inc. 1527 Barton Avenue Memphis, Tennessee	$2,500,000	May 5, 1964
Murphree Mortgage Company 226 3rd Avenue, North Nashville, Tennessee	Note 1	
Murray-Ohio Manufacturing Co.	$1,800,000	June 17, 1963
635 Thompson Lane	$2,300,000	June 24, 1963
Nashville, Tennessee	$3,000,000	July 15, 1963
	$2,500,000	April 10, 1964
	$3,000,000	June 15, 1964
Tennessee Packers, Inc.	$1,600,000	September 11, 1961
c/o Mr. Lorenz Neuhoff, Jr.	$2,000,000	January 23, 1963
Valleydale Packers, Inc. Salem, Virginia		

Note 1: Dobson & Johnson, Inc., Kimbrough-Kavanaugh & Associates and Murphree Mortgage Company are all in the business of brokering mortgages and handling construction credit for contractors. As the principal bank of account for these firms, Third National handles credit under two categories—specifically, warehousing of mortgages and loans for construction purposes. Prior to January 1, 1961, all three of these firms had reached such a volume in their operations that they were continuously using credit in excess of Third National's legal limit. To state a date that a specific request was made would be virtually impossible as the balance outstanding varied daily. Indeed, it would be more accurate to say that Third National agreed to handling credit in excess of its legal limit when it agreed to become the principal bank for these three firms.

* Maximum borrowings which were attained on date shown.

December 6, 1963.

Mr. A. F. Gill
Family Finance Corporation
201 West 14th St.
Wilmington, Delaware

Dear Andy:

As you know during recent years we have held at your disposal a line of credit of $1,750,000.00. A short time ago, due to an increase in surplus, our legal limit was increased to $2,000,000.00.

If you so desire we will be very happy to increase your line to the above amount. Just let us know your wishes.

With kindest regards, I am,

Yours very truly, ——, ——, Senior Vice President.

SH/m

March 2, 1961.

Mr. A. F. Gill, Vice President,
Family Finance Corporation,
201 West Fourteenth Street,
Wilmington 99, Delaware.

Dear Andy:

We are very pleased to receive your letter of February 28th in which you advised that the acquisition of all of the assets and business of Modern Finance Corporation by Family Finance Corporation was completed on February 28, 1961. We are glad to see that the final details have been successfully brought to a conclusion.

We were pleased to increase our line of credit to Family Finance Corporation to $1,400,000.00.

We appreciate the fine relationship we have had with your company these many years and assure you of our desire to be of assistance when the occasion arises.

Sincerely yours, ——, ——, Chairman of the Board.

WJD:MI

FAMILY FINANCE CORPORATION
201 West Fourteenth Street, Wilmington 99, Delaware
Telephone OLympia 4-9951
Post Office Box Number 748

February 28, 1961.

Mr. Walter J. Diehl,
Chairman of the Board
Third National Bank
Nashville 3, Tennessee

Dear Walter:

The acquisition of all of the assets and business of Modern Finance Corporation by Family Finance Corporation was completed on February 28, 1961.

The increase in the sustaining balance in connection with the increase in our line of credit to $1,400,000 was forwarded to you on December 15, 1960 for deposit to the account of Diamond State Life Insurance Company.

We wish to again thank you for the confidence shown in Family by increasing our line of credit, and we will show this increase in our quarterly release on lines of credit which will be furnished to all of our credit line banks shortly after March 31, 1961.

Thank you and with kindest personal regards, I am

Sincerely yours, A. F. Gill, Vice President.

AFG:IM

September 2, 1964.

Mr. Robert G. Bonham
Vice President
The Gates Rubber Company
999 South Broadway
Denver, Colorado 80217

Dear Bob:

We have finally merged the Nashville Bank and Trust Company, and the resulting increase in capital funds makes it possible for us to increase the line of credit which we have been extending your company to $2,500,000.00 from $2,000,-000.00.

We sure do hate to lose ole Peterson on October 1, but you can't hold back progress. Bill Gish, I am sure, will prove to be a competent fill in.

Cordially, ——, ——, Senior Vice President.

JWC:rss

August 26, 1964.

Mr. O. A. Lundin, Treasurer
General Motors Corporation
General Motors Building
3044 West Grand Boulevard
Detroit, Michigan 46202

Dear Oscar:

This will confirm an arrangement for this bank to extend the General Motors group our full line of credit of $2,400,000. We will set the lines up $1,200,000 for the parent company and $1,200,000 for General Motors Acceptance Corporation. I am sending a copy of this letter to Mr. Van Wagner at GMAC for his information.

Looking forward to seeing you in Miami.

Best regards.

Sincerely yours, ——, ——, Senior Vice President.

WJP:ce
cc: Mr. James R. Van Wagner

December 29, 1964.

Mr. A. J. Reimers
Assistant Treasurer
Ralston Purina Company
Checkerboard Square
St. Louis, Missouri

Dear Jack:

Although I have written you previously, prior to receipt of your 1963 year-end statement, I would now like to notify you formally that we have approved for Ralston Purina Company a line of credit for our legal lending limit of $2,400,000. We hope that you will take advantage of this as often as your needs may require.

With warmest of personal regards and every good wish for a Happy and Prosperous New Year, I am

Sincerely, ——, ——, Vice President.

RJB:ce

December 2, 1964.

Mr. J. C. Fox
Chairman of the Board and Treasurer
Blue Bell, Inc.
335 Church Street
Greensboro, North Carolina

Dear Mr. Fox:

I appreciate very much indeed your letter of November 30. We will welcome an opportunity to have a prominent place in your banking picture and will be pleased to make available to you credit equivalent to our legal limit of $2,400,000.00. We have right along extended Red Kap our legal limit and, as you of course know, have been their principal bank practically from the inception of the business. When and if the merger is consummated, I would like very much to accompany Hubert Wyatt to Greensboro so that I could get to know you, Mr. Morris and your other associates. In the meantime, if there is anything over this way that we can do, I will depend upon your letting me know.

Sincerely yours, ——, ——, President.

SMF:b

August 21, 1964.

Mr. Clayton H. Banzhaf
Senior Assistant Treasurer
Sears, Roebuck and Company
925 South Homan Avenue
Chicago 7, Illinois 60607

Dear Clayton:

One of the advantages of our merger with Nashville Trust Company is the increase in our legal lending from $2,000,000 to $2,400,000. I know you set your lines once each year, but we have authorized your borrowing in amounts equivalent to our new lending limit, if you so desire, either by the parent company or any of its affiliates. We will reconfirm the line at the regular time.

I will be writing you early next week regarding our plans for our annual dinners at Miami. We hope you will hold either Saturday or Sunday evening for us.

Best regards.

Sincerely yours, ——, ——, Senior Vice President.

WPJ:ce

cc: Mr. John Armistead

6B. Listed below are the loans in which Third National sold participations in order to keep the credit below its legal limit:

Bass Compact Homes, Inc.—April 23, 1964, sold $183,554.93 participation to Planters Bank & Trust Company, Hopkinsville, Kentucky.

Capitol Airways, Inc.—September 13, 1963, sold $4,700,000 participation to First National City Bank, New York, New York.

R. M. Crichton—January 10, 1963, sold $1,000,000; $200,000; $52,409 to First National Bank, Lubbock, Texas; Murfreesboro Bank & Trust Company, Murfreesboro, Tennessee; Harpeth National Bank, Franklin, Tennessee, respectively.

Dobson & Johnson, Inc.—Note 2

W. M. Jarman, Trustee—See comments under Nashville Bank & Trust below. The $9,500,000 credit taken by Third National represents its portion of a $19,630,640 credit handled by First American National Bank, Nashville, Tennessee.

Kimbrough Kavanaugh & Associates successors to Kimbrough-Phillips Company and The Southern Trust Company of Nashville—Note 2

Malone & Hyde, Inc.—May 5, 1964, sold $300,000 and $200,000 to Murfreesboro Bank & Trust Company, Murfreesboro, Tennessee and Bank of Huntingdon, Huntingdon, Tennessee, respectively.

Murphree Mortgage Company—Notes 2 and 3.

Murray-Ohio Manufacturing Company—June 18, 1963, sold $50,000 to Bank of Trenton & Trust Company, Trenton, Tennessee; June 25, 1963, sold $300,000 to Murphreesboro Bank & Trust Company, Murfreesboro, Tennessee; July 16, 1963, sold $50,000, $200,000, and $100,000 to First National Bank, Springfield, Tennessee, Planters Bank & Trust, Hopkinsville, Kentucky, Union Bank, Pulaski, Tennessee, respectively; July 17, 1963, sold $25,000 to The Peoples National Bank, La Follette, Tennessee; July 18, 1963, sold $80,000, $55,000, $25,000, $40,000, and $75,000 to Blount National Bank, Maryville, Tennessee, Old & Third National Bank, Union City, Tennessee, Midtown Bank, Miami, Florida, Union National Bank, Fayetteville, Tennessee, The Riverside Bank, Miami,

Florida, respectively; April 13, 1964, sold $75,000, $25,000, $100,000, and $50,000 to Old & Third National Bank, Union City, Tennessee, McKenzie Banking Company, McKenzie, Tennessee, Bank of Huntingdon, Huntingdon, Tennessee, and Farmers Exchange Bank, Union City, Tennessee, respectively; April 14, 1964, sold $150,000 and $100,000 to Murfreesboro Bank & Trust Company and Bank of Trenton & Trust Company, respectively; June 15, 1964, sold $200,000 to Planters Bank & Trust Company, Hopkinsville, Kentucky; June 25, 1964, sold $50,000, $100,000, and $150,000 to Nashville Bank & Trust Company, Bank of Huntingdon, Murfreesboro Bank & Trust Company, respectively.

Tennessee Packers, Inc.—January 23, 1963, sold $25,000, $75,000, $75,000 and $75,000 to Bank of Trenton & Trust Company, Murfreesboro Bank & Trust Company, Harpeth National Bank, and Planters Bank & Trust Company, respectively.

Note 2: Third National has followed a practice of selling participations in the loans to these three customers on a very frequent basis in relatively small amounts to each participating bank. The details of these sales for the period in question are contained on at least 100 double faced ledger sheets for the account with the lowest volume and at least twice this for the other two accounts. The bank will gladly furnish copies of these sheets if this material should be relevant. Suffice it to say, however, that with some 350 correspondent banks during this time and their desire to obtain loans due to lack of demand in their communities, the volume of these participations has been extremely voluminous and on any given date some 40 to 50 banks may be involved.

Note 3: In July, 1963, Third National established a pool participation for the handling of loans for Murphree Mortgage Company in addition to the continued use of sales of the loans in small amounts to county banks. Four pools were established as follows:

1. a. Construction loan pool—Maximum of $1,000,000 to be outstanding with Third National retaining 20% and First National Bank, Boston, Massachusetts, taking 80%.

b. Construction loan pool—Maximum of $4,000,000 to be outstanding with Third National retaining 20% and 40% each taken by Harris Trust & Savings Bank, Chicago, Illinois, and First National Bank, St. Louis, Missouri.

2. a. Mortgage warehouse pool—Maximum of $2,000,000 with Third National retaining 20% and First National Bank, Boston, Massachusetts, taking 80%.

b. Mortgage warehouse pool—Maximum of $4,000,000 with Third National retaining 20%, Harris Trust & Savings Bank, Chicago, Illinois, taking 10%, First National Bank, St. Louis, Missouri, taking 50%, and First National Bank, Atlanta, Georgia, taking 20%.

6A. Loans approved** by Nashville Bank and Trust above the legal limit:

Date	Name	Amount
March 13, 1961	Murray Ohio 635 Thompson Lane Nashville, Tennessee	$ 800,000.00
May 25, 1961	Thompson & Green Murfreesboro Road Nashville, Tennessee	617,004.70
March 6, 1962	Murray Ohio 635 Thompson Lane Nashville, Tennessee	900,000.00
February 26, 1963	Murray Ohio 635 Thompson Lane Nashville, Tennessee	1,000,000.00
March 21, 1963	George Peabody College 21st Avenue, South Nashville, Tennessee	1,000,000.00
April 2, 1963	Oman Construction Company Acklen Park Nashville, Tennessee	1,000,000.00
December 30, 1963	Thompson & Green Murfreesboro Road Nashville, Tennessee	1,000,000.00
February 27, 1964	Murray Ohio 635 Thompson Lane Nashville, Tennessee	1,000,000.00
April 1, 1964	Oman Construction Company Acklen Park Nashville, Tennessee	1,000,000.00

** actual borrowings achieved on date shown.

B. July 6, 1964, participated with the following banks in $7,500,000 credit to W. M. Jarman, Trustee, with Third National being lead bank:

Third National Bank in Nashville	4,515,000.00
Cottage Grove Bank & Trust, Cottage Grove, Tenn.	25,000.00
Bank of Cowan, Cowan, Tenn.	50,000.00
Weakley County Bank, Dresden, Tenn.	50,000.00
First State Bank, Greenville, Ky.	100,000.00
Bank of Dyer, Dyer, Tenn.	15,000.00
Bank of Troy, Troy, Tenn.	20,000.00
Central State Bank, Lexington, Tenn.	50,000.00
Bank of Hollandale, Hollandale, Fla.	50,000.00
Bank of Oak Ridge, Oak Ridge, Tenn.	100,000.00
Riverside Bank, Miami, Fla.	100,000.00
Peoples National Bank, LaFollette, Tenn.	30,000.00
Blount National Bank, Maryville, Tenn.	90,000.00
Decatur County Bank, Decaturville, Tenn.	50,000.00
Bank of Dickson, Dickson, Tenn.	50,000.00
First State Bank, Chapel Hill, Tenn.	25,000.00
Old & Third National Bank, Union City, Tenn.	75,000.00
Bank of Huntingdon, Huntingdon, Tenn.	50,000.00
Union Bank, Pulaski, Tenn.	100,000.00
Planters Bank & Trust Company, Hopkinsville, Ky.	100,000.00
Bank of Trenton & Trust Company, Trenton, Tenn.	50,000.00
The Peoples First National Bank & Trust Co., Paducah, Ky.	20,000.00
Citizens State Bank of Lyon County, Eddyville, Ky.	15,000.00
Nashville Bank and Trust Company, Nashville, Tenn.	1,000,000.00
Murfreesboro Bank & Trust Company, Murfreesboro, Tenn.	300,000.00
The Peoples Bank, Ripley, Mississippi	75,000.00
Valley Fidelity Bank & Trust Company, Knoxville, Tenn.	300,000.00
City National Bank, Fulton, Ky.	25,000.00
First National Bank, Hohenwald, Tenn.	50,000.00
The Dukedom Bank, Dukedom, Tenn.	20,000.00
	$7,500,000.00

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT NO. 595

Interrogatory No. 7. Describe known loan applications, (including loans made) in excess of $700,000, to any bank in Davidson County since January 1, 1963.

Answer to Interrogatory No. 7.

7. Records are not kept at the Third National Bank on applications received by the bank which are subsequently rejected except in extremely unusual situations relating to the character of the applicant rather than the amount of credit requested. All of the Senior Officers of Third National have been asked to recall from memory any loan applications in excess of $700,000 which they may have known to have been rejected by Third National since January 1, 1963. No such applications were recalled. Additionally, these officers were asked to recall any loans or applications in excess of $700,000 handled by any other banks in Davidson County since January 1, 1963. Since any such statement by any of these officers would merely be in the realm of speculation, particularly in the area of describing such loans or applications and since the Nashville banks do not make a practice of confiding in one another concerning their respective customers, it is virtually impossible to prepare this interrogatory in any way other than to list the loans of Third National made between January 1, 1963 and August 17, 1964 in excess of $700,000. These customers' names and addresses along with the high credit used and the dates this credit remained over $700,000 are given below:

Name and Address	High	Dates Credit Exceeded $700,000
Austin Carolina Co., Inc. Kinston North Carolina	$ 1,750,000	August 15, 1963 to April 8, 1964 August 31, 1964 to date
Carl Batson 4229 Franklin Road Nashville, Tennessee	950,000	April 11, 1963 to July 20, 1964
Board of Publication of the Methodist Church, Inc. 201 Eight Avenue South Nashville, Tennessee	925,000	January 1, 1963 to December 2, 1963

Name and Address	High	Dates Credit Exceeded $700,000
Bradford Ave. Corp. 833 Ridley Blvd. Nashville, Tennessee	985,000	June 6, 1963 to July 19, 1963
J. C. Bradford Co. 424 Union Street Nashville, Tennessee	2,475,000	January 14, 1963 to June 6, 1963 August 15, 1963 to July 16, 1964 July 21, 1964 to August 18, 1964
M. P. Brothers Co. Inc. P. O. Box 269 Nashville, Tennessee	890,000	January 1, 1963 to August 10, 1964
Brown Engineering Co. Inc. Huntsville, Alabama	2,000,000	May 10, 1963 to August 19, 1963 September 23, 1963 to October 22, 1963 November 1, 1963 to November 26, 1963 January 6, 1964 to August 31, 1964
Brown Forman Distillers Corp. P. O. Box 1080 Louisville, Kentucky	1,100,000	January 1, 1963 to August 23, 1964
W. Lyons Brown 1908 Howard Street Louisville, Kentucky	1,113,650	June 6, 1963 to August 17, 1964
C. I. T. Financial Corp. New York, New York	750,000	July 15, 1963 to January 10, 1964
Capitol Airways, Inc. Berry Field Airport Nashville, Tennessee	6,305,610	April 9, 1963 to date
Country Club Apts. of Huntsville 1720 West End Bldg. Suite 309 Nashville, Tennessee	965,000	January 1, 1963 to April 2, 1963
Country Club Apts. of Knoxville 1720 West End Bldg. Suite 309 Nashville, Tennessee	900,000	March 12, 1963 to July 19, 1963
The Crescent Co. Inc. 415 Church St. Nashville, Tennessee	1,000,000	January 1, 1963 to October 25, 1963
R. M. Crichton P. O. Box 180 Nashville, Tennessee	3,205,779	January 10, 1963 to May 13, 1964
W. H. Criswell 224 West Hillwood Nashville, Tennessee	700,000	March 17, 1964 to April 17, 1964
Cumberland Associates 1114 Sudekum Bldg. Nashville, Tennessee	799,727	March 8, 1963 to January 3, 1964
Dobson & Johnson Inc. (construction)	827,730	January 1, 1963 to date

Name and Address	High	Dates Credit Exceeded $700,000
Dobson & Johnson (whse.) 1109 Third National Bank Bldg. Nashville, Tennessee	2,356,500	
The Elk Cotton Mills Fayetteville, Tennessee	800,000	February 3, 1964 to April 23, 1964
Empire Pencil Co. Div. of Hassenfeld Bros. Inc. Shelbyville, Tennessee	1,950,000	January 1, 1963 to November 20, 1963 April 15, 1964 to date
Family Finance Corp. 201 W. 14th Street Wilmington, Delaware	1,750,000	January 1, 1963 to March 5, 1963 September 9, 1963 to March 10, 1964
Genesco Inc. 111 7th Avenue North Nashville, Tennessee	2,000,000	January 1, 1963 to February 11, 1963 October 8, 1963 to February 6, 1964 February 6, 1964 to May 14, 1964
Gesco Pooled Investment Trust Fund 111 7th Ave. No. Nashville, Tennessee	1,750,000	June 11, 1963 to September 4, 1963
Heil Quaker Corp. Chicago, Illinois	1,180,000	April 22, 1963 to October 2, 1963 May 18, 1964 to October 21, 1964
Hillsboro Enterprises 1104 Third National Bank Bldg. Nashville, Tennessee	965,000	June 4, 1964 to October 14, 1963
Calvin Houghland 900 44th Avenue North Nashville, Tennessee	1,034,220	May 10, 1963 to September 11, 1963 December 2, 1963 to June 1, 1964 June 25, 1964 to date
Industrial Finance Corp. 33 State Street Boston, Mass.	1,500,000	January 1, 1963 to September 3, 1963 January 27, 1964 to October 16, 1964
Industrial Realty Co. Inc. Nashville, Tennessee	1,000,000	February 5, 1963 to date
Ingram Materials Inc. P. O. Box 1049 Nashville, Tennessee	805,000	February 14, 1964 to date
E. B. Ingram 4304 Harding Road Nashville, Tennessee	962,750	September 20, 1963 to date
F. B. Ingram 1200 Hibernia Bldg. New Orleans, La.	1,088,750	April 15, 1963 to date
W. M. Jarman, Trustee 111 7th Ave. No. Nashville, Tennessee	9,500,000	January 1, 1963 to date

Name and Address	High	Dates Credit Exceeded $700,000
Kimbrough Kavanaugh & Assoc.		
416 Union St. (construction)	3,790,350	January 1, 1963 to date
Nashville, Tennessee (whse.)	1,439,175	
Kingsberry Mortgage Co. 5096 Reachtree Rd. Chamblee, Ga.	1,013,713.22	January 1, 1963 to November 30, 1964 March 20, 1964 to August 6, 1964
Lebanon Woolen Mills, Inc. Lebanon, Tennessee	1,000,000	May 10, 1963 to November 6, 1963
Louisville & Nashville R. R. Co. 908 W. Broadway Louisville, Ky.	1,046,513.51	January 1, 1963 to date
Malone and Hyde Inc. 1700 Dunn Ave. Memphis Tennessee	2,500,000	May 4, 1964 to date
Mason & Dixon Lines Inc. P. O. Box 231 Kingsport, Tennessee	1,400,000	March 29, 1963 to date
Morris Avenue Corp. Bank of Savings & Trust Bldg. Birmingham, Alabama	750,000	June 10, 1963 to July 30, 1964
Murphree Mortgage Company 226 Third Avenue North Nashville, Tennessee	$10,814,000	January 1, 1963 to date
Paul Mountcastle L & C Tower Nashville, Tennessee	1,075,000	January 1, 9163 to March 14, 1963 September 30, 1963 to date
Mountcastle Import Motors c/o Paul Mountcastle L & C Tower Nashville, Tennessee	437,000	January 1, 1963 to date
The Murray Ohio Mfg. Co. 635 Thompson Lane Nashville, Tennessee	3,000,000	March 15, 1963 to November 26, 1963 March 16, 1964 to December 14, 1964
Nashville Cotton Oil Mill Corp. P. O. Box 730 Nashville, Tennessee	804,150	November 11, 1963 to January 3, 1964
Nashville Memorial Hospital Inc. 2624 Gallatin Road Nashville, Tennessee	1,000,000	May 18, 1964 to date
Eugene Pargh-Gerald Averbuch 1720 West End Bldg. Nashville, Tennessee	875,000	May 29, 1964 to date
Philadelphia & Reading Corp. 400 Park Avenue New York, New York	1,011,281.25	June 16, 1964 to July 13, 1964
Provident Trust Co. (whse.)	886,000	January 1, 1963 to date
210 Union Street (construction)	961,094	January 1, 1963 to date
Nashville, Tennessee		
Ralston Purina Company St. Louis, Mo.	1,022,500	January 18, 1963 to August 21, 1963

Name and Address	High	Dates Credit Exceeded $700,000
Red Kap Inc. 508 Sudekum Bldg. Nashville, Tennessee	1,700,000	February 27, 1963 to June 11, 1963 April 9, 1964 to November 17, 1964
Ryder System Inc. Out Participation with First National Bank Boston, Mass.	940,501	January 1, 1963 to date
Schenley Industries Inc. 1275 Avenue of The Americas New York, N. Y.	1,000,000	August 28, 1963 to December 3, 1963
Sears Roebuck & Company Chicago, Ill.	809,000	April 15, 1964 to July 14, 1964
Security Mutual Finance Corp. P. O. Box 412 Decatur, Alabama	700,000	March 30, 1964 to June 26, 1964
The Shaffer Corp. 150 Elm Street Mansfield, Ohio	1,215,097	April 6, 1964 to date
Suber Edwards & Company P. O. Box 981 Quincey, Florida	1,316,000	January 1, 1963 to date
Time Inc. Lubbock, Texas	1,100,000	June 19, 1964 to date
Tennessee Packers Inc. Salem, Virginia	2,000,000	January 1, 1963 to December 24, 1964
Third National Company 4th Floor Third National Bank Bldg. Nashville, Tennessee	1,550,000	April 17, 1964 to date
J. L. Turner & Sons Inc. Scottsboro, Kentucky	1,180,000	January 1, 1963 to September 24, 1963 October 21, 1963 to December 31, 1963 March 2, 1964 to June 1, 1964
Universal Leaf Tobacco Co., Inc. Richmond, Virginia	1,750,000	January 1, 1963 to July 9, 1963 September 12, 1963 to November 14, 1963 January 30, 1963 to January 30, 1964 to April 10, 1964
Vernon Corp. 3355 Poplar Avenue Memphis, Tennessee	1,075,570	December 5, 1963 to October 24, 1964
Louis E. Wolfson P. O. Box 4 Jacksonville, Florida	850,000	January 1, 1963 to date
W. H. Wyatt 5087 Sudekum Bldg. Nashville, Tennessee	889,000	April 15, 1963 to February 8, 1965

Answer to Interrogatory No. 7 continued (with reference to Nashville Bank and Trust Company).

7. Loans requested of Nashville Bank and Trust in excess of $700,000 since January 1, 1961, in addition to those noted above:

Early June, 1963, declined participation of $1,000,000 with Wells Fargo Bank in loan to Dam Equipment Leasing Association. Agreed to take $500,000 in total credit of $13,000,000.

On July 24, 1962, Meharry Medical College requested $750,000, but was never used.

In United States District Court

Plaintiff's Exhibit No. 596

Nashville Bank and Trust
Office of
Third National Bank
Nashville, Tennessee

Overton Thompson, Jr.,
Vice President

December 30, 1965.

Edwin F. Hunt, Esquire
Boult, Hunt, Cummings & Conners
American Trust Building
Nashville, Tennessee 37021

Dear Ed:

I have received copy of letter dated December 3, addressed to you from Mr. James L. Minicus. In response to the questions raised therein, I make the following statement which is correct to the best of my recollection:

In the Fall of 1962 I went to New York to visit the United States Trust Company at the request of Mr. Hill, and upon my return reported back to him. At that time he stated that he felt there was a need in this community for a more complete and specialized trust service and indicated more interest in such a venture than expanding our banking operation. He asked me what I would think about my heading up such a trust company, organized along the same lines and for the same purposes as the U. S. Trust Company. I, of course, indicated my interest but had to express my sincere doubts as to the feasibility of a pure trust operation in this neighborhood without an active and expanding banking operation from which to draw our prospects. After discussing this question on one or more subsequent occasions, the idea was dropped.

I cannot recall any other discussions with Mr. Hill in which my future with the Bank was specifically discussed.

As for discussions with Mr. Hackworth, I cannot recall any occasion on which my future advancement at the Bank was the topic under consideration. However, I would have

to say that on numerous occasions over the years while discussing problems within the Bank, Mr. Hackworth made such comments as "You might have to worry about this yourself some day", or "If you ever have this job, you might have to do this, etc." Apparently this was his method of encouraging his officers, and I think the fact that my duties and responsibilities were never changed beyond that of a trust solicitor is indicative of the seriousness of such comments.

I am sending this letter in duplicate so that you might send a copy on to Mr. Minicus.

Yours very sincerely, Overton Thompson, Jr., Vice President.

In United States District Court

Plaintiff's Exhibit No. 610

Comptroller of the Currency
Treasury Department

National Bank Examiner

Memphis, Tennessee
May 6, 1964.

Re: Application for merger of the Third National Bank, Nashville, Tennessee and the Nashville Bank & Trust Company, Nashville, Tennessee.

Comptroller of the Currency
Washington, D. C.

Dear Sir:

My investigation with regard to the subject application made in accordance with instructions of Regional Comptroller of the Currency, W. A. Robson, Eighth National Bank Region, discloses that the information contained in the application is accurate as to facts available and is reasonable as to estimates.

The Third National Bank was chartered July 14, 1927 and opened for business four days later with a capital of $600,000 and surplus of $120,000. Through capable and aggressive management this bank has grown to be the second largest bank in Nashville. This growth was achieved without the benefit of merger, consolidation, purchase of assets or assumption of liabilities at any time during its history. In 1948 management realized that to offer more efficient and convenient services to its customers branches were needed. Subject bank now has fourteen branch offices in operation. It has an active correspondent bank department serving approximately 365 banks in the Mid-South.

The Third National Bank is strongly capitalized and its history of retained earnings is excellent. Of the total capital structure of $22,342,225, as of December 31, 1963, only $3,845,000 was paid in and $18,159,359 came from retained earnings.

The Nashville Bank and Trust Company was chartered by the State of Tennessee as the Nashville Trust Company

on July 6, 1889 and opened for business on September 9, 1889 with a capital of $250,000 to engage exclusively in trust business. In 1900 this institution opened a savings department, and a banking department to accept checks and deposits followed in 1901. In 1903 it moved to its present location on Third Avenue. On November 13, 1930 the American National Bank absorbed the Fourth and First National Bank, which controlled the Nashville Trust Company, and merged the American Trust Company with Nashville Trust Company under the name of Nashville and American Trust Company. *During the banking crisis* Mr. H. G. Hill was asked to reorganize the Nashville and American Trust Company as the Nashville Trust Company. He and a group paid in $1,000,000 capital and $500,000 surplus. On May 8, 1956 the name was changed to the Nashville Bank and Trust Company and on May 3, 1959 it opened its first and only branch on Murfreesboro Road.

Commercial banking activities have been a comparatively recent development and have been confined primarily to the immediate community served. During the five years ending December 31, 1963 deposits had grown from $33,264,393 to $45,457,860, loans from $15,454,834 to $22,810,584 and capital accounts from $3,036,289 to $4,310,626. It now ranks fourth in size of the Nashville banks. In January of this year William C. Weaver, Jr., financial vice president of the National Life & Accident Insurance Company, with some of his business associates purchased controlling stock interest from the H. G. Hill Company.

The Nashville Trust Company has an adequate capital structure and the history of retained earnings is good. A substantial portion of its earnings are derived from its trust department which has assets in excess of $79,000,000 and is one of the largest trust departments in the state. Future growth and earnings of the commercial department is limited due largely to two factors; management and lack of branch facilities. Management is not aggressive, the senior officers are approaching retirement age and no provision has been made for succession. To effectively compete for the available banking business it is necessary to have an extensive branch system. This bank has only one branch in operation and since all areas of the county are already well served with branches, suitable locations are almost prohibitively high in price, and since bank lacks the necessary capable

personnel to staff branches, it would be very difficult to enter into a profitable branch program at this late date.

Capital resulting from the proposed consolidation will be adequate for the deposit structure and scope and volume of the operations of the consolidated bank. The proposed capital structure of $26,882,297 is considered adequate for estimated deposits of $340,432,445 and estimated loans of $210,997,302.

The corporate powers of the Third National Bank, a national banking association, and the Nashville Bank & Trust Company, a Tennessee Corporation, are consistent with the purposes of the Federal Deposit Insurance Act. Deposits of both of these banks are insured in accordance with the provisions of the Federal Deposit Insurance Act.

The proposed Board of Directors for the consolidated bank will consist of the present twenty-five Directors of the Third National Bank and W. S. Hackworth, president of the Nashville Bank and Trust Company. The executive head of active management will be Sam M. Fleming, President of the Third National Bank. Mr. Fleming, age 55, is aggressive, somewhat liberal but is considered to be well qualified for the position he holds. Other senior officers of the Third National Bank will retain their titles and duties. W. S. Hackworth will be named Vice Chairman of the Board. Fitzgerald S. Parker, Vice President and Trust Officer of the Nashville Bank and Trust Company will be named Vice President and Trust Officer of the Third National Bank. Two other vice presidents of the merging bank will retain their titles in the resulting bank. Policies will be determined to a large extent by President Fleming. The consolidated bank has a proposed management in depth that will be strong and capable.

Future earnings prospects for the consolidated bank are considered good. Each of the two banks has achieved good net earnings from operations over the past five years. The automation program in the Third National Bank should result in a lower unit cost of items processed thus increasing net profit from operations for the consolidated bank.

Nashville, Tennessee is the state capital and the county seat of Davidson County and has an estimated population in excess of 400,000. This reflects a 24% increase in population since 1950. The economy of the area is based on industry, finance, commerce and agriculture. Future indus-

trial and population growth seems assured as the area is well served by adequate road, rail, water and air transportation. There is an adequate supply of low-cost efficient labor, abundant water supply and cheap electrical power supplied by the TVA. The growth in population as well as new business is centered in the suburban areas of Nashville. To provide adequate banking service for these people a system of branches is needed and the merging bank is unable to provide this service.

The charter bank and the merging bank substantially compete with each other in nearly all categories of loans and deposits. However, the merging bank is becoming less and less a competititive factor. Listed below are the total deposits and loans held by the banks in Nashville as of December 20, 1963:

Name of Bank	Deposits	% of Total	Loans	% of Total
First American National Bank	357,513M	39.8	172,081M	35.9
Third National Bank	304,099M	33.9	175,219M	36.5
Commerce Union Bank	185,871M	20.7	105,098M	21.9
Nashville Bank and Trust	42,024M	4.7	22,377M	4.7
Capital City Bank	5,763M	.6	3,139M	.6
Citizens Savings Bank & Trust	2,988M	.3	1,747M	.4
Resulting Bank	346,123M	38.5	197,596M	41.2

Competition between banks in Nashville has always been keen, and although the elimination of one through merger will reduce the number of banks, the competitive factor will not be lessened.

The consolidating bank would realize the following benefits from the consolidation:

Competent management which it now lacks.

A profitable, well managed system of branches which it needs to retain present customers and to gain new business.

More efficient internal operations.

More efficient and faster service to its customers.

The Charter bank will realize the following benefits from the consolidation:

It will gain two additional banking offices.

A large trust department with capable management.

Increased capital structure which will result in a larger loan limit.

The public will also benefit through the larger lending limit of the resulting bank and the customers of the consolidating bank will have access to the broader banking services offered by the charter bank.

The charter bank is the second in size and the consolidating bank is fourth largest in the city. The resulting bank would remain second in size.

It is the examiner's opinion that the consolidation would have but little effect on competition and would not create a monopoly. The resulting bank would be in a better position to serve the banking needs of the community.

It is respectfully recommended that the application of the Third National Bank and the Nashville Bank and Trust Company to consolidate under the title of the Third National Bank be Approved.

Respectfully, Dean D. Piercy, National Bank Examiner.

In United States District Court

Plaintiff's Exhibit No. 613

Comptroller of the Currency
United States Treasury
Regional Comptroller of the Currency
Eighth National Bank Region
167 North Main Street
Memphis, Tennessee 38103.

May 13, 1964.

Comptroller of the Currency
Washington, D. C.

Re: Application for approval to merge the Third National Bank in Nashville and the Nashville Bank & Trust Co., both of Nashville, Tennessee, under the charter and title of the Third National Bank in Nashville.

Dear Sir:

Enclosed is a letter report of this proposed merger dated May 6, 1964 and submitted by Examiner Dean D. Piercy.

Generally, the factors are favorable toward approval of this merger. Through this merger the Third National Bank would increase its share of the total Nashville deposits by 4.6% and would increase its share of the Nashville loans by 4.7%. The Third National Bank now ranks second in size among the commercial banks in Nashville, and would still rank second in size after consummation of this merger.

The Nashville Bank & Trust Co. has gone to seed and has not maintained a commercial banking growth pattern proportionate to the three largest banks in Nashville. It has only one branch, compared to fifty branches being operated by the three larger banks in Nashville. It is not in a position capital-wise and personnel-wise to embark upon an expansion program through branching. Neither does it have the size to afford modern accounting methods which are becoming more and more necessary. Merging with the Third National Bank would actually result in greatly improved commercial banking services to the customers of the Nashville Bank & Trust Co., such as an expanded lending limit, an established system of full service branches, a computer

accounting system already in existence, and the full range of banking services of a regional bank.

Consummation of this merger would remove from the local scene a competitor engaged in many of the same commercial banking activities as the charter bank. It is observed that the applicant banks compete with each other with some intensity for commercial and industrial loans and loans for personal expenditures.

Of considerable significance in this application, which is not given much emphasis, is the competition which exists between the applicants in the fiduciary field. The merging bank has trust account assets of nearly $80,000,000. The charter bank has fiduciary account assets of about $46,000,000. If this merger is consummated, the resulting trust department would exceed in size the fiduciary account assets of the First American National Bank of Nashville, and would probably be far greater than similar assets of the Commerce Union Bank.

It is my opinion that elimination of the competition which exists between the two applicant banks, while having some adverse effect upon the local competitive picture, is not of sufficient gravity to overthrow the favorable banking factors which are readily apparent, and I therefore recommend approval.

Also attached is a letter from the Superintendent of Banks of the State of Tennessee, who expresses the opinion that this merger would intensify competition in Nashville, rather than detract from it.

Very truly yours, W. A. Robson, Regional Comptroller of the Currency, Eighth National Bank Region.

WAR:sjw

(Enclosures)

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 636

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 636

FORM 8008

SCHEDULE

AVERAGE BALANCE	FREE CHECKS	CHECKS	BASE CHARGE
LESS THAN $100.00	NONE		$ .75
$100.00 TO $200.00	NONE		.50
$200.00 TO $300.00	NONE		.25
$300.00 TO $400.00	NONE		NONE
$400.00 TO $500.00	5		NONE
$500.00 TO $600.00	10		NONE

5 ADDITIONAL FREE CHECKS FOR EACH $100.00 ADDITIONAL AVERAGE BALANCE

FIRST AMERICAN NATIONAL BANK
NASHVILLE 2, TENNESSEE

According to the schedule shown hereon, we charge your account for the month ending ....as follows:

BASE CHARGE . . . .

CHECKS @ 6c each . . . ______________
MINIMUM CHARGE 25c

TOTAL . . . .

DEBIT:

In United States District Court

Plaintiff's Exhibit No. 637

SERVICE CHARGE SCHEDULE

MINIMUM BALANCE	BASE CHARGE	CHECKS PAID @ 6¢ EACH	CREDIT ALLOWED	TOTAL CHARGE
LESS THAN $100.00	75¢		NONE	
$100.00 TO $200.00	75¢		20¢	
$200.00 TO $400.00	75¢		50¢	
$400.00 TO $600.00	50¢		1.00	
$600.00 TO $800.00	50¢		1.50	
$800.00 TO $1,000.00	50¢		2.00	

NO CHARGE MADE UNDER 20¢

COMMERCE UNION BANK

ACCORDING TO THE SCHEDULE SHOWN HEREON, WE CHARGE YOUR ACCOUNT FOR THE MONTH

OF ____________________.

TO ______________________________

____

____

[fol. 1] IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 640

IN THE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF TENNESSEE, NORTHERN DIVISION OF NASHVILLE

Civil No. 3849

UNITED STATES OF AMERICA, Plaintiff,

vs.

THIRD NATIONAL BANK IN NASHVILLE and NASHVILLE BANK & TRUST COMPANY, Defendants.

* * * * * * *

[fol. 2] The deposition of SAM FLEMING, taken by consent on behalf of the plaintiff at Nashville, Tennessee, on October 21, 1964, for purposes of discovery pursuant to the Federal Rules of Civil Procedure.

SAM FLEMING, being first duly sworn, was examined and deposed on discovery as follows:

EXAMINATION

By Mr. Minicus:

Q. Kindly state your full name and present business and resident addresses.

A. Samuel Milton Fleming, president, Third National [fols. 3-6] Bank in Nashville, located at the corner of Fourth and Church Streets. Residence, 7810 Jackson Boulevard.

* * * * * * *

[fol. 7] Q. On August 18, 1964, the comptroller of the currency announced the merger of Nashville Bank and Trust Company into Third National; will you kindly describe in general terms the mechanics of amalgamation which ensued.

A. We simply combined our general books with their general books.

Q. What procedures were involved in taking over the physical premises of Nashville Bank and Trust Company's main office and branch?

A. There were no unusual procedures at all. They continued to operate just as they had been operating and we continued to operate just as we had been except the general books were merged.

Q. The name was changed on the entry?

A. It hasn't been yet.

Q. Did any of your people move in and commence working in Nashville Bank's quarters?

A. Not immediately. After several weeks, they asked for two young men to come down, one to help them set up a credit department, two more I believe to help them call on their customers to explain what had happened and what the policy was going to be and try to generate as much good will as possible.

Q. Is that the only integration of personnel that has been accomplished so far, the two men you spoke of?

[fol. 8] A. Yes, I believe that is the extent of it so far. If you mean integration by physically moving them from one building to the other——

Q. (Interposing) Yes, and a working integration.

A. Yes. Of course, we have joint staff meetings. We have joint committee meetings on loans, and there are many things that we do together, but my answer to the question, as I interpreted yours, is: How many people have physically moved from one bank to the other.

Q. Is it feasibly possible for the resulting bank to operate these two large facilities so close to each other?

A. Oh, yes, indeed. The pattern for that, of course, has been set in New York City where one large New York bank might be within one block of a branch that would have one hundred million dollars in deposits. The fact that they are located so close together would not make any particular difference. So many of the customers today do business by mail or they would come in for a loan or whatever their relationship might be, a trust relationship, not considering that the Nashville Bank and Trust

Company was one block or ten blocks away from the Third National Bank.

Q. And you think that the comparison of New York City and Nashville will carry over to your——

A. (Interposing) It is only a pattern. The same thing [fol. 9] exists in many other cities today. We have one of our largest branches, for instance, located only a few blocks up Church Street from us; the First American has just received permission to establish a new branch on Capitol Hill—this is one and a half blocks away from their main office.

I don't think that the fact that the pattern of banking, where the physical location is in the proximity of the main office of another branch has much to do with. The question is: What are the particular needs and requirements of the customers? And we feel that a bank that has operated for 75 years in one location should continue to operate in that same location. Customers are creatures of habit to a certain extent, they like to go to one place; they have been going to that place and they will continue to do so and it is our full intention not only that the Nashville Bank and Trust office continue to be operated in the same place by the same officers, assisted by any of our group that they might need, by our branches and organization; we have already employed an architectural firm to draw plans for extensive renovation of the entire ground floor, and we would hope within the next eight to ten months to move our entire trust operation in with their trust operation, [fols. 10-12] on the ground floor of their present location.

Q. And you will continue to operate a deposit and a loan department?

A. Oh, yes, indeed. We have named Mr. Overton Thompson, who was vice president and trust officer of the Nashville Bank and Trust, as the manager of this office. He has the same staff that he had before, or substantially the same. Of course, they have lost several people, but, other than that, he has the nucleus of the same staff plus the three young men that we have sent to them. They are aggressively contacting their old customers and trying to get new business.

* * * * * * *

[fol. 13] By Mr. Minicus:

Q. Were personnel of Third assigned to conduct an analysis of the financial statements and various condition statements of Nashville at the time of the takeover?

A. Of Nashville?

Q. Of the Nashville Bank and Trust Company.

A. You mean of the bank itself?

Q. Yes. Did you begin to analyze its condition at that time?

A. No, only to the extent that I went over the last published balance sheet and analyzed the operating reports, which Mr. Hackworth gave me through June 30, 1964.

Q. And as of that time, what was found to be Nashville Bank and Trust Company's condition as a going institution?

A. It was a solvent, sound institution making a reasonable return on its capital, but without having provided sufficient expenditure for automation, salaries, pensions, new branches, all of which we consider to be absolutely neces-[fol. 14] sary to operate a full-service, commercial bank. Therefore, we gave considerable weight to the fact that the earnings as shown by them should be discounted considerably if they had incurred the expenditures necessary to do all of these things that I have just mentioned.

Q. What were the principal factors which your analyses found which were considered to constitute it a valuable asset, the principal factors that rendered it a valuable asset?

A. A going institution that had been in business for 75 years, a location that people had become accustomed to using, a garage that was attached to the bank, which we were unable to have, ours having to be across the street; a nucleus of trust business representing some of the oldest and best families of Nashville; a nucleus of several employees that we felt were valuable, not enough of them, but there were three or four that we felt could render assistance to any bank; the fact that several of the directors like the Cheek family would become our stockholders; various people connected with the National Life and Accident Insurance Company had become stockholders, and, therefore, were interested in helping develop the combined institutions; and the fact that it was a respected name in [fols. 15-23] Nashville, closely identified with the Hill fam-

ily, which is one of the most respected and wealthiest families in Nashville and whose business would be a very valuable asset to any banking institution and whose good will would be even more valuable. I think that is generally what the plus factors as we saw them were.

* * * * * * *

[fol. 24] Q. Let's shift our sights then from the stockholder to the customer; isn't that factor that you just mentioned a variable, is it not true that there are some [fol. 25] people who would prefer to do business with an aggressive, growing, forward looking bank; others who may be persuaded to do business with a bank by virtue of its heritage, its established position in the community for a long number of years, such consideration?

A. Of course, there would be some people that would feel that way—I don't think that there would be any large number. However, we have tried our best to decentralize our branch banking system, giving authority, great authority, to the men that are running those branches. Many of them are vice presidents of our banks, keeping in mind that they are the ones that are in direct touch with the customers and that the customers are going to do business with John Jones who runs our West Nashville office or with Jack Smith who runs our East Nashville office more than with just the Third National Bank. Now, with the Nashville Bank and Trust Company there were a number of very loyal people; that is one reason we were interested in merging with them. We are a much younger institution than they are. We are only 37 years old, they are 75 years old. We have tried our best, since the merger, to keep the identity, the image and the status, of the Nashville Bank and Trust intact, so that we would not lose that good will, and, in turn, those people who want to do business with the Nashville Bank and Trust [fol. 26] as a separate institution can continue to do so. I might mention that it is working very well.

Q. From your testimony, I think we can accept, however, that profits are one of the chief criteria of success of a bank.

A. No question about it.

Q. The quantity of deposits in dollar value, would you consider that another leading criteria of the success of a bank?

A. Much of the public considers it so, but I think that is overemphasized, frankly, because deposits can be so volatile. You'd have to analyze how much of it is demand deposits, how much of it is public funds, how much of it is savings accounts, or the new certificate of deposits which you can go out and buy wholesale. You have to analyze the deposit mix in order to fully appreciate what the institution is.

Q. Would my statement have been correct if I had limited it to IPC deposits, IPC deposits?

A. What kind?

Q. IPC, individual corporate and partnership profits.

A. Savings accounts have to be considered; they are an important part of a commercial bank. Today, we are really running two type banks under one roof. We are running a savings bank and a commercial bank to an in- [fol. 27] creasing extent and there is a profit squeeze on for those banks which have too much of their deposit mix in savings.

One of the minus factors of the Nashville Bank and Trust, very frankly, was that they had about 50 per cent of their deposits in savings and they are very costly. Another factor we considered was they had a very large amount of public funds, which we knew that we would lose when the merger took place.

* * * * * * *

[fol. 28] Q. How can the item of capital accounts indicate success or otherwise in a bank?

A. Capital account in itself does not indicate success. I would say the amount of the capital account that is represented by retained earnings would be indicative of the successful operations of the bank over a period of time.

Q. Does the item undistributed profits usually indicate wholly retained earnings?

A. Undivided profits I presume.

Q. Undivided.

A. Undivided profits definitely is earnings that have been retained. However, they can be paid out as dividends.

Q. To what extent does that apply to surplus?

A. Surplus and capital cannot be paid out as dividends. However, capital can be increased by a stock dividend

which would come out of undivided profits. Surplus, of course, is periodically increased by the transfer of monies from undivided profits into surplus.

In our bank, the Third National Bank before this merger, we are very proud of the fact that about 90 per cent of our capital surplus and undivided profits is represented by retained earnings.

Q. Wasn't there also a very large percentage of the capital accounts figured in Nashville Bank in surplus and [fols. 29-41] undivided profits?

A. I will have to look at the statement. As of March 11, the capital of Nashville Bank and Trust was $1,633,300; the surplus $1,700,000; and the undivided profits $1,030,000. I would say that that is about an average mixture.

* * * * * * *

[fol. 42] Q. You have testified that presently all of the former officers of Nashville Bank and Trust Company are now integrated into the operation of Third National, is that correct?

A. They are integrated to the extent that their names are on our financial statements, that they are a part of the Third National Bank complex, but every one of them is still identified with the Nashville Bank and Trust office of the Third National Bank. We have not moved one single one over to our bank. Unfortunately, one of their finest men, a man who was highly regarded in this community, is being buried this morning, Mr. Kenneth Brush, one of their best men, and they have lost several other men, but [fol. 43] all the rest are there performing the same services they have before with the exception of Mr. Overton Thompson, we have moved him from the trust department into the management of that office.

Q. Are they establishing themselves as competent in their duties?

A. If I may say so with modesty, I believe that we have been able to build into them more enthusiasm, a greater desire to work for the objectives which the two institutions have, more enthusiasm than they have had for a long time, and, as a result, I would say that they have been working out very satisfactorily. One of the factors, though, in changing their attitude and enthusiasm I would say is what

we have done in a salary and pension way. We have given two substantial raises to the officers the most recent being the first of this month. We have tried to set their salaries in keeping with the responsibilities of their duties in the same salary that we pay our men. We have gone through every one of their employees and we have reclassified them or we have put them into a classification trying to correspond with what our people were doing and are adjusting their salaries accordingly. We are arranging now to triple the amount of group insurance that was available to them. We have been making available health and accident in- [fols. 44-45] surance in a more extensive way than was available for hospitalization. In other words, we have proceeded immediately to give them the morale building factors which I think are so important to any successful institution and it is paying off.

* * * * * * *

[fol. 46] Q. As a result of the merger, do you know approximately the amount of total deposits acquired from [fol. 47] Nashville Bank and Trust?

A. The Nashville Bank and Trust had an account with us that averaged about $4,000,000 at the time of the merger, so we lost, of course, that account the day of the merger. They had around $5,000,000 in public funds—that is state, county and so forth. Their total deposits the day of the merger were in the neighborhood of $40,000,000, but we lost automatically $4,000,000 of that 40 million because of the elimination of the account they were carrying with us, so that would bring it down in the neighborhood of 36 or 7, of which some $5,000,000 was public funds.

Q. Of that 36 to 37 million dollars in deposits acquired from Nashville——

A. (Interposing) We acquired more, but we lost $4,000,000 in the acquisition. We have to speak in net figures.

Q. Net figures. What percentages have you been able to retain since the merger?

A. Our biggest problem has been with those accounts like the State of Tennessee, Davidson County, public entities where they would carry an account with both institutions. We have had a problem of persuading them to continue doing business just like they were. I really haven't

totaled up what their balances are right now. We have lost some business and we have obtained only a minimum [fol. 48] amount of new business in the Nashville Bank and Trust office, but, if I would use an abstract figure, I would say that we have retained 95 per cent of it.

Q. Was the four million dollar account maintained by Nashville Bank in Third marked for any specific purpose?

A. We cleared their checks for them. They were not a member of the Federal Reserve System, which also was a very great handicap to them. If they wanted to go out and get correspondent bank accounts, for instance, they couldn't attract them because they were not a member of the Federal Reserve. All the checks that they had outside of Nashville, they deposit them with us and we would clear those checks for them and deposit to their account. Also, it served as a reserve account the same as we carry a reserve in the Federal Reserve and I might mention one of the minus factors, so far as they were concerned, was the fact that they were not a member of the Federal Reserve System. It certainly was a restraining factor on their growth in the correspondent banking field and the large customers outside of Nashville.

Q. Did other banks in Nashville clear checks for them too?

A. Formerly, the First American cleared checks for them and also the Commerce Union, but we became the principal clearing bank after the merger was announced.

Q. After the merger. And, let us say, during the year [fol. 49] 1963, were you the principal clearing agent for them?

A. No, not—I'd say the First American was the principal clearing agent up until about the first of March.

Q. Have you——

A. (Interposing) Until after this was announced.

Q. Have you any idea of the amount of the balance carried with Third by Nashville Bank during 1963?

A. During '63 they carried around one million and a half balance with us.

* * * * * * *

[fol. 50] Q. Did Third National and Nashville Bank and Trust engage in rivalry to attract trust accounts?

A. I wouldn't say rivalry. Most of your trust accounts come from your customers, and, so far as the general public is concerned, you very seldom will attract a trust customer who is doing business with some other bank. Normally, it is just an additional service rendered to your [fols. 51-53] your customers. I would say that over 90 per cent of your trust business comes from your own customers.

* * * * * * *

[fol. 54] Q. Considering only the appeals made to customers maintaining either business or residence addresses within Davidson County, with regard to which commercial banking activities did Nashville Bank and Trust Company fail to offer some rivalry to Third National acquisition of [fol. 55] new customers?

A. With regard to advertising?

Q. No, with regard to any commercial banking activity, which banking activities did——

A. (Interposing) Because of the size of their loan limits, they were unable to compete actively for the larger borrowing customers and most of your large commercial customers are borrowing customers at one time or another. They were unable—rather—they did not go into the wholesale consumer finance field, particularly in the automobile end of it. They did not compete for correspondent banking business. Not being a member of the Federal Reserve System, it would be almost impossible for them to obtain many correspondent bank accounts and we have over $60,000,000 of them in our bank, 365 different banks. Certificates of deposit that come from the larger commercial customers I would say that they had a minimum of those. We have been developing that field more extensively. The tax checks which large corporations deposit with you to the Federal government account, they were not in a position to have competed very actively for those. So far as individual accounts, particularly those either working or living in the proximity of their downtown office or their Murfreesboro Road office, they could offer pretty much the [fols. 56-66] same services we could. They were severely handicapped by only having two such offices.

* * * * * * *

[fol. 67] Q. I believe that you testified that you commenced to automate and to modernize about three years ago?

A. Oh, no, we began to modernize, or rather automate, around ten years ago.

Q. Let's say with a computer.

A. With a computer? We installed our computer—it was within the last two years, I think within the last 18 months. We had it on order for a year before we could ever get it, of course.

Q. Now, with your description is an indication that this entire practice has cost Third a great deal of money; can you estimate for us the total expense of automation within the last three years to Third National considering purchasing equipment, installation, adjustment and keeping in repair?

A. What would I estimate it?

Q. Yes.

A. Including training, I'd say over a million dollars.

Q. Are such costs feasible for a small or medium bank to [fol. 68] incur?

A. No.

* * * * * * *

A. I think what they should have done would have been to have modernized their equipment through various machines other than the computer and then to have tried to combine with other smaller banks to share the cost of a computer. That is permissible under new regulations now and in certain places they are being—it is being worked out all right. If the Nashville Bank and Trust and all of the other smaller banks in this section—I think they might have gone out to Franklin and Murfreesboro and around—if they would have established a separate corporation, they could have afforded to have shared the cost of this automation and that would have been the logical thing for them to have done if they could have persuaded the other banks to go in with them, but this is a new field and it is not easy to do that, but, without doing it, a bank the size of Nashville Bank and Trust—I reiterate—is severely handicapped in efficiently performing a commercial banking business

[fols. 69-71] today. The costs would have been less than ours, but still the cost would have been great.

* * * * * * * *

[fol. 72] Q. Mr. Hill testified that the Nashville Bank and Trust Company was never called upon for a loan which approached its lending limit; in light of this fact, and since its limit was substantially higher than national banks of comparable size, how did this present a problem for resolution between Nashville Bank and Trust Company?

A. It prevented them from going out and soliciting the business of larger concerns which require credit in amounts larger than they could grant. I would say the reason that they weren't asked for loans, they didn't have those kind of customers and couldn't get them.

A. This is a fact that is applicable to all banks of the size of Nashville Bank and Trust Company, is that not [fol. 73] correct?

A. I don't know that it would be for all of them. Some smaller banks make arrangements with their city correspondent to handle excess portions of loans larger than they can handle.

Q. Was not that facility available to Nashville Bank and Trust Company through its Chicago, St. Louis and New York connections?

A. It would have been through the Nashville connections if they had gone after that type business and asked the banks to handle it, but they just weren't set up to handle customers of that kind. Frankly, they didn't have any credit department for one thing, and you can't lend money in great big amounts without a credit department.

Q. What are the functions of the credit department, Mr. Fleming?

A. The credit department is supposed to obtain financial statements, analyze them, review loans in relation to the financial condition of the business; if the occasion arises, go out and visit the plant, talk to the management, to do everything that is necessary to support the loan officer in making an intelligent judgment on a credit.

Q. Were there no personnel within Nashville Bank and [fol. 74] Trust Company trained to analyze financial statements?

A. They didn't even have any credit files.

Q. Did they call for a financial statement as a condition for making a loan?

A. They didn't have any financial statements as far as we can find out; if they had any, it was a hand full. We have sent a man there that has been spending two months now doing nothing except establishing credit files, obtaining financial statements and writing loan commitments.

Q. How did they go about making their loans?

A. Kept them in their heads, the information regarding them. You must realize that they had a very small amount of unsecured loans. Of their loan totals, over $6,000,000 were in mortgage loans, over $6,000,000 in mortgage loans and another two and a half or three million dollars in consumer finance loans. I think that you wouldn't find over $12,000,000 of loans that would be of the commercial or individual type and I would say the great percentage of those were on a collateral basis.

Q. Considering the size of the bank, $12,000,000, is that considered below normal, $12,000,000 out of, as you say, $40,000,000?

A. No, I think they had an unusually large amount of mortgage loans of their total loan portfolio. They had [fols. 75-79] some 27 or 8 per cent of their total loans were in real estate mortgages.

Q. But would you consider relating it to the assets or deposits, whatever standard you want to use, would you consider $12,000,000 of commercial loans or even a smaller amount abnormally low?

A. Oh, no, I wouldn't say so at all. The question is the type loans they were making. I get back to the type institution that was being operated. Twenty-two million dollars in loans—they had over a fourth of those loans in real estate mortgages. They had 10 per cent of the loans in consumer finance loans which were secured by automobiles, refrigerators and so forth. Now, the other $12,000,000 I don't have the figures before me and I am estimating, but I would say that certainly over 50 per cent of those were collateral loans secured by stocks or bonds or chattel mortgages or what not. Then, you would get back to comparatively small number of loans that would have to be supported by financial statements or what we call a commercial

bank business. Now, they just didn't operate that type bank.

Q. What are the functions of the auditing department?

A. The function of the auditing department is to check every transaction of the bank, to keep a daily record of the operations, to be the watchdog of everything that goes on.

[fol. 80] Q. Now, changing to a different topic, Mr. Fleming, and this is the last general topic: In what year did you first introduce the subject to Horace Hill, Jr., of the disposal of the stock in Nashville Bank and Trust Company controlled by him?

A. I never really had any formal discussions with Mr. Hill regarding the merger or acquisition of the Nashville Bank and Trust Company. On one or two occasions, I had a chance to kind of visit together. I would take advantage of an opportunity and say, "If you ever decide to dispose of the Nashville Bank and Trust, I'd like to talk with you."

Q. Do you remember when this topic of conversation with Mr. Hill commenced, how far back that was?

A. I would say I have no—it was so informal whenever it did happen that I would have no particular recollection of it. It could have been in '63. It might even have been in '62 on some occasion, but I would say more likely it was some time during '63, because there were more and more rumors getting around that Mr. Hill might decide to [fol. 81] dispose of the Nashville Bank and Trust Company, rather the Hill Company, which was going to expand their business in the grocery field.

Q. It is my recollection that Mr. Hill testified that conversations of this nature, of the nature you have described, have been going on for a period of about ten years. Do you have any recollection of that period of time?

A. Ten years? Well, I wouldn't say that he was incorrect. The matter of Nashville Bank and Trust has always been a matter of conversation around in business circles and I have never had what you might call a formal discussion with Mr. Hill as to where I would sit down at his desk and start talking about making an acquisition of the Nashville Bank and Trust, but I could have very easily in the course of discussing a number of things over a period of years talked along the line that I mentioned,

that if he ever did decide that he wanted to dispose of it that I would like to talk to him.

Mr. Hill and I have many interests in common. We serve on several boards together, we are thrown together socially and his recollection would be better than mine, perhaps, in that respect, because we have talked about so many different things, and I know this: That if it would have been a year or ten years, if I ever felt that I had [fol. 82] an opportunity to have interested him in talking with me seriously, I would have taken advantage of it. I frankly never put much importance in it because I didn't think he wanted to sell.

Q. Your interest in merging Nashville Bank and Trust Company with Third National has existed for some years?

A. If I thought that it would have been possible to have interested Mr. Hill, we could have gotten a very definite interest. To be perfectly frank with you, I didn't think Mr. Hill had any serious thoughts at all about disposing of the Nashville Bank and Trust.

* * * * * * *

[fol. 83] A. The first that I heard about Mr. Weaver's and his associates' purchase of the Nashville Bank and Trust Company was when I was in Puerto Rico. Mr. D. W. Johnston, chairman of the board of our bank, called me in Puerto Rico and as I recall his statement he said, "Hold your hat, I have some real news for you." And I said, "What is it?" He said, "Bill Weaver and his associates have purchased the controlling interest of the Nashville [fols. 84-89] Bank and Trust Company from the H. G. Hill Company." He said that Bill Weaver and Ed Craig had called on him that day—as I recall, it was January 23—to inform the Third National Bank of their action and to assure the bank that there would be no change in the relationship which the National Life and Accident Insurance Company or the relationship which the Nashville Bank and Trust had had as a correspondent of the Third National Bank.

* * * * * * *

[fol. 90] Q. In any way did you or Third extend or facilitate Mr. Weaver's credit in these purchases from Mr. Hill?

A. Yes. We loaned Mr. Weaver whatever money was [fol. 91] required for him to take up the portion of the stock that he purchased, which I recall was 4,000 shares.

* * * * * * *

[fol. 92] By Mr. Degnan:

Q. Mr. Fleming, you testified that Third National loaned money to Mr. Weaver to finance his purchase of the Nashville Bank and Trust Company shares; do you know whether Third National loaned money to associates of Mr. Weaver?

A. Oh, yes, we loaned money to quite a few of them.

* * * * * * *

[fols. 93-95] Mr. Degnan: I think that covers it. That is all I have.

Mr. Minicus: We turn the witness over to counsel.

Mr. Hunt: I don't think we need leave the room.

Mr. Farris: No questions.

And Further Deponent Saith Not.

Sam Fleming

Sworn to before me when taken this 21st day of October, 1964.

James R. White, Notary Public, County of Davidson—State of Tennessee.

My commission expires July 28, 1968.

In United States District Court

Plaintiff's Exhibit No. 645

Management Inventory

Nashville Bank and Trust Company
as of January 15, 1964

Title	Age	Years of Ed.	Length of Service	Salaries Paid by: Nashville Bank & Trust as of 1/15/64	Salaries Paid by: Third National as of 4/1/66
1. President	68	16	8 yrs.	$28,389.90	Deceased (1/20/66)
Banking Department					
2. Vice-Pres.-Dept. Head	65	14	44 yrs.	11,697.00	Retired
3. Vice-Pres.	59	12	44 yrs.	10,788.75	$13,500.00
4. Asst. V-P	39	12	17 yrs.	7,137.90	9,500.00
5. Asst. V-P	62	12	33 yrs.	7,949.55	10,000.00
6. Asst. V-P	42	12	7 yrs.	7,154.70	9,500.00
7. Asst. Sec.	28	16	5 yrs.	5,645.85	8,500.00
8. Asst. Treas.	25	12	8 yrs.	5,645.85	8,000.00
Mortgage Department					
9. Vice-Pres.-Dept. Head	75	13	18 yrs.	10,560.90	Retired (12/31/65)
10. Vice-Pres.	57	14	39 yrs.	9,766.05	11,000.00
Auditor-Comptroller					
11. Auditor-Dept. Head	72	13	7 yrs.	7,154.70	7,155.00
12. Asst. Auditor	57	16	39 yrs.	7,494.90	8,000.00
New Business Department					
13. Vice-Pres.-Dept. Head	59	12	44 yrs.	10,788.75	13,500.00
14. Vice-Pres.	46	12	25 yrs.	10,788.36	Resigned (1/29/64)
Real Estate Department					
15. Vice-Pres.-Dept. Head	66	12	47 yrs.	13,059.90	Deceased (10/9/64)
Trust Department					
16. V-P & Tr. Off. Dept. Head	59	19	37 yrs.	14,194.95	18,000.00
17. V-P & Tr. Off.	48	19	18 yrs.	11,923.80	19,000.00
18. Sec. & Treas.	61	12	12 yrs.	9,993.90	13,500.00
19. Asst. Treas.	30	16	4 yrs.	5,745.00	8,500.00
20. Asst. Tr. Off.	38	16	4 yrs.	6,489.00	8,000.00
21. Asst. Tr. Off.	32	20	5 yrs.	6,343.05	Resigned after merger (3/12/65)

Source: DX 44, Application to Merge, and Answer to Plaintiff's Interrogatory 21.

In United States District Court

Plaintiff's Exhibit No. 646

Top Ten Officers of Nashville Bank & Trust Co.
(According to Salaries as of October 15, 1962)

Title	Yrs. of Ed.	Length of Service	Salary
1. President	16	7	$26,250.00
2. V-P & Tr. Off. (Dept. Head)	19	36	13,125.00
3. V-P Real Estate (Dept. Head)	12	46	12,075.00
4. V-P & Tr. Off.	19	17	11,025.00
5. V-P Banking Dept. (Dept. Head)	14	43	10,815.00
6. V-P Banking Dept.	12	43	9,975.00
7. V-P New Business Dept.	12	43	9,975.00
8. V-P New Business Dept.	12	24	9,450.00
9. V-P Mortgage Dept. (Dept. Head)	13	17	9,765.00
10. Secy-Treas. (Trust Dept.)	12	11	9,240.00
Averages for 2—5th ranking officers	16.0	35.5	11,760.00
Averages for 1—10th ranking officers	14.1	28.7	12,169.50

Sources: DX 44; Application to Merge; Answer to Plaintiff's Interrogatory No. 21; and INX 21 (FDIC Report of Examination of Nashville Bank & Trust Co., 1962.)

In United States District Court

Plaintiff's Exhibit No. 651

Small Population Areas
Compensation of Highest Paid Officer

Percentage Based on Total of Each Column

Deposit Size in Millions of Dollars

	Over 100	50 to 100	25 to 50	10 to 25	Under 10	
0— 5,999					8	7
6,000— 9,999				1	50	41
10,000— 14,999			2	27	30	28
15,000— 19,999	1	2	12	41	9	13
20,000— 29,999	9	40	61	27	3	8
30,000— 49,999	57	54	25	4		3
50,000— 74,999	29	2				
75,000— 99,999	4	1				
Over 100,000		1				
	100	100	100	100	100	100

Source: IBM print-outs prepared by Board of Governors of Federal Reserve System.

Data contained in these print-outs were derived from bank reports of examination.

In United States District Court

Plaintiff's Exhibit No. 652

All Banks
Compensation of Highest Paid Officer
Percentage Based on Total of Each Column

Deposit Size in Millions of Dollars

	over 100	50 to 100	25 to 50	10 to 25	under 10	
0— 5,999					8	8
6,000— 9,999				1	49	37
10,000— 14,999			3	26	31	28
14,000— 19,999		3	12	42	9	14
20,000— 29,999	5	35	57	27	3	10
30,000— 49,999	42	58	27	4		4
50,000— 74,999	34	4	1			1
75,000— 99,999	13					
over 100,000	6					
	100	100	100	100	100	100

Source: IBM print-outs prepared by Board of Governors of Federal Reserve System.

Data contained in these print-outs were derived from bank reports of examination.

In United States District Court

Plaintiff's Exhibit No. 653

Small Population Areas
Average Compensation of Second to Fifth Highest Paid

Percentage Based on Total of Each Column

Deposit Size in Millions of Dollars

	Over 100	50 to 100	25 to 50	10 to 25	Under 10	
0— 5,999				3	63	52
6,000— 9,999			4	48	33	33
10,000— 14,999	1	12	60	54	4	11
15,000— 19,999	17	53	30	4		3
20,000— 29,999	63	34	6			1
30,000— 49,999	18	1				
50,000— 74,999	1					
75,000— 99,999						
Over 100,000						
	100	100	100	100	100	100

Source: IBM print-outs prepared by Board of Governors of Federal Reserve System.

Data contained in these print-outs were derived from bank reports of examination.

In United States District Court

Plaintiff's Exhibit No. 654

All Banks
Average Compensation of Second to Fifth Highest Paid

Percentage Based on Total of Each Column

Deposit Size in Millions of Dollars

	Over 100	50 to 100	25 to 50	10 to 25	Under 10	
0— 5,999				3	61	48
6,000— 9,999			4	48	35	34
10,000— 14,999		12	58	45	4	12
15,000— 19,999	11	51	32	4		3
20,000— 29,999	49	35	6			2
30,000— 49,999	31	2				1
50,000— 74,999	6					
75,000— 99,999	2					
Over 100,000	1					
	100	100	100	100	100	100

Source: IBM print-outs prepared by Board of Governors of Federal Reserve System.

Data contained in these print-outs were derived from bank reports of examination.

In United States District Court

Plaintiff's Exhibit No. 655

Small Population Areas
Average Compensation of Top Ten Officers

Percentage Based on Total of Each Column

Deposit Size in Millions of Dollars

	Over 100	50 to 100	25 to 50	10 to 25	Under 10	
0— 5,999					21	18
6,000— 9,999	1		5	57	70	65
10,000— 14,999	3	26	76	42	8	14
15,000— 19,999	21	57	19	1	1	2
20,000— 29,999	64	16				1
30,000— 49,999	11	1				
50,000— 74,999						
75,000— 99,999						
Over—100,000						
	100	100	100	100	100	100

Source: IBM print-outs prepared by Board of Governors of Federal Reserve System.

Data contained in these print-outs were derived from bank reports of examination.

In United States District Court

Plaintiff's Exhibit No. 656

All Banks
Average Compensation of Top Ten Officers

Percentage Based on Total of Each Column

	Deposit Size in Millions of Dollars					
	Over 100	50 to 100	25 to 50	10 to 25	Under 10	
0— 5,999					21	16
6,000— 9,999			6	55	69	62
10,000— 14,999	2	25	74	44	9	16
15,000— 19,999	15	58	20	1	1	3
20,000— 29,999	51	16				2
30,000— 49,999	25	1				1
50,000— 74,999	5					
75,000— 99,999	2					
Over—100,000						
	100	100	100	100	100	100

Source: IBM print-outs prepared by Board of Governors of Federal Reserve System.

Data contained in these print-outs were derived from bank reports of examination.

In United States District Court

Plaintiff's Exhibit No. 660

[Subcommittee Print]

An Evaluation of the Management Succession Problem in the Commercial Banking Industry

Subcommittee on Domestic Finance
Committee on Banking and Currency

House of Representatives
88th Congress, 2d Session

[Seal]

December 21, 1964

Printed for use of the Committee on Banking and Currency

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Letter of Transmittal

December 17, 1964

Hon. WRIGHT PATMAN,
Chairman, Committee on Banking and Currency,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Transmitted herewith is a first report analyzing data provided by the questionnaire on Management Succession, Market for Bank Stocks, and Financial Reporting. This report analyzes the data provided on the management succession problem in the commercial banking industry. It does not include an analysis of the compensation of bank officers, a subject which, because of confidentiality and processing schedules, could not be completed in time for inclusion in this study.

While the conclusions, in view of this omission, should be considered as preliminary, the report nonetheless deals with a very interesting body of data from which some significant general conclusions are drawn. These conclusions are:

1. While it is true that the banking industry faces a management succession problem in the next decade, this problem is not nearly as urgent or severe as has been suggested by the number of bank mergers attributed to problems of successor management.

2. While the data suggest that the severity of the succession problem is mostly strongly related to bank size, the severity does not appear to be related to the size of the city in which the bank is domiciled nor to whether the bank operates as a unit or as a branch bank.

3. Furthermore, the data strongly indicate that the competence of commercial bank top management has risen markedly throughout the Nation in the past two decades.

I wish to express my appreciation to Lee Langum of the Board of Governors of the Federal Reserve Board for aid in preparing the questionnaire. An advisory group of bank officers was appointed by the American Bankers Association to provide technical assistance in preparation of this report. Paul F. Jessup, of the committee staff, helped in formulating the questionnaire and supervised the editing

process in transcribing the data from the questionnaire to a form which could be analyzed by computers. Mr. Charles Fletcher of the office of the Comptroller of the Currency, Mr. Edwin N. Johnson and Miss Elizabeth Tewksbury of the Federal Deposit Insurance Corporation, and Mrs. Louise Hiller of the Board of Governors of the Federal Reserve also gave us valuable assistance.

The author takes full responsibility for the analysis and conclusions reached in the report.

Respectfully submitted.

DONALD P. JACOBS, Associate Professor of Finance, School of Business, Northwestern University.

[1] An Evaluation of the Management Succession Problem in the Commercial Banking Industry

Introduction and Conclusions

* * * * * * *

[4] A second method of studying the problem of management succession is to make inferences about competence and depth of management from data on education, experience, and ages of different levels of management in the bank. Use of this type of data implies that higher education levels are an indication of greater competence, and that longer experience also suggests higher competence. Of course education and experience are not perfect proxies for competence but they are the best measurable variables we could get. The age level should also provide some estimate as to the replacement problem.

* * * * * * *

[24] TABLE K-1.—Most common reason given for rejection—All banks

[Percent of all banks within size class]

	Deposit size in millions of dollars						
	Over 100	50 to 100	25 to 50	10 to 25	Under 10	Total	All
Salary	..	..	50	125	470	645	29
Fringe benefits	..	12	...	...	110	122	5
Promotion opportunity	..	10	...	34	314	358	16
Location problems	20	50	68	54	380	572	26
Other	21	20	66	79	337	523	24
Total	41	92	184	292	1,611	2,220	100

* * * * * * *

[31] Channels of Recruitment

We have found that in recent years a high degree of upward mobility is exhibited by top-level bank officers. A substantial proportion of personnel promoted were employed within the bank at the time of promotion. However it is desirable to know the importance of the various channels used for recruiting officers.

Data on recruitment channels has been collected for different officer levels in bank management. These data refer to how the officer originally came to the bank at the time he entered officer status. Comparisons of interest will be

made both cross sectionally by size of banks and also between levels of managerial authority.

Promotions from within, which accounted for 46 percent, were by far the most important manner in which the highest paid officer arrived at his position. It is interesting to note that promotion from within seems to have been more important for the smaller size classes than for the larger size classes (table R–1).

The next most important cateogry of recruitment, accounting for 20 percent, was acquisition from another bank. Again it is worth noting that the largest banks seemed to have relied more heavily on this avenue of recruitment than did the smallest banks.

Recommendation of other banks and supervisory agency contacts were both of very small importance; both together accounted for only 8 percent. Personal acquaintance, which accounted for 9 percent, was more important than the latter two categories combined.

An interesting point of conjecture in many discussions of the importance of management succession in motivating mergers is the desirability and disposition of management acquired as a part of a merger transaction. As has been stated, the wave of bank mergers which has occurred in the last 15 years is widely believed to have been heavily motivated by the lack of successor management among small banking institutions. Data in table R–1 indicate that the two largest size classes of banks acquired a higher proportion of their highest paid employee through merger than did the smaller size classes. In absolute terms the largest size class of banks acquired top paid officers [32] through merger more frequently than all but the smallest size class. This fact becomes even more significant when the relative numbers of banks included in the various size classes is considered. A part of this higher proportion among the two largest size classes could be attributed to mergers between two relatively large banks; but this type of merger has been relatively rare. The vast majority of mergers have been between two small or medium sized banks or between a small or medium size bank and a bank in the two largest size classes. Thus, the presumption seems to be that some mergers were motivated by the desire of the larger bank to acquire management of the smaller bank. Or at least, that the small bank management

was a plus factor in the merger, rather than the usually stated presumption that the large bank has a reservoir of management talent that is needed by the smaller bank.

The distribution of channels through which the second highest paid officer was acquired is shown in table R–2. The difference in the distributions between the first and second level of management are not very large. Promotion from within is higher, rising from 46 to 52 percent. Other bank and supervisory recommendations, however, are lower, as is the proportion hired from other banks. The relationship between sizes of banks are about the same. The one seemingly important change is the relatively large rise in the personal acquaintance category for the smallest size class; from 10 percent to 18 percent.

TABLE R–1.—Channels of recruitment for highest paid officer

[Percent of all banks within size class]

	Deposit size in millions of dollars					
	Over 100	59 to 100	25 to 50	10 to 25	Under 10	All
Promotion from within	39	39	40	46	45	46
Recommended by other banks	3	7	7	7	4	5
Contacts with supervisory agency, etc.	5	4	5	3	2	3
Came from another bank	25	24	23	22	20	20
Advertising	...	...	...	1	...	...
Unsolicited application	1	1	1	1	3	2
Incident to merger	7	5	1	1	1	1
Business or customer contacts	5	5	6	4	3	3
Personal acquaintance	9	10	8	6	10	9
Other	6	5	9	9	12	11
Total	100	100	100	100	100	100

TABLE R–2.—Channels of recruitment for 2d highest paid officer

[Percent of all banks within size class]

	Deposit size in millions of dollars					
	Over 100	50 to 100	25 to 50	10 to 25	Under 10	All
Promotion from within	49	47	51	53	52	52
Recommended by other banks	3	6	7	6	2	3
Contacts with supervisory agency, etc.	6	6	4	3	1	2
Came form another bank	17	14	19	16	9	11
Advertising	...	...	...	1	...	...
Unsolicited application	3	2	1	3	6	5
Incident to merger	6	6	1	1	1	1
Through educational institutions	...	1	...	...	...	...
Business or customer contacts	5	5	6	5	5	5
Personal acquaintance	9	8	7	6	18	15
Other	2	5	4	6	6	6
Total	100	100	100	100	100	100

[33] TABLE R-3.—Channels of recruitment for 3d highest paid officer

[Percent of all banks within size class]

	Deposit size in millions of dollars					
	Over 100	50 to 100	25 to 50	10 to 25	Under 10	All
Promotion from within	50	51	55	60	55	55
Recommended by other banks	2	4	4	4	3	3
Contacts with supervisory agency, etc.	4	2	3	2	2	2
Came from another bank	15	14	14	11	5	7
Advertising	1	...	2	1	1	1
Unsolicited application	4	4	5	6	5	6
Incident to merger	7	6	3	1	1	1
Through educational institutions	...	...	1	1	1	1
Business or customer contacts	7	7	5	4	6	6
Personal acquaintance	7	5	5	8	16	14
Other	3	7	3	2	5	4
Total	100	100	100	100	100	100

The distribution of channels through which the third highest paid officer was acquired is shown in table R-3. As can be seen, this distribution continues the trend set in the change from the first to the second highest paid officers.

Aside from the doubt shed on the usual presumption as to the value of management of the absorbed bank to the absorbing, these data shed doubt on two other widely held beliefs about channels of management recruiting.

First, it is often stated that small banks typically do not train successor management, but rather rely upon their ability to hire management away from the larger banks. Secondly, bank supervisory agencies are often credited with an important contribution in management recruitment of small banks. The supervisory agencies—more particularly, bank examiners—are said to pass along information on the availability of potential managers. City correspondent banks are also often given credit for helping recruit management for their small correspondent banks.

Neither of these presumptions is buttressed by the data. Other bank recommendations and recommendations by the supervisory authorities are both of relatively small importance. Moreover, the data do not suggest the existence of flow of trained personnel from larger to smaller banks.

* * * * * * *

[34] Some Indirect Measures of Extent of the Management Succession Problem in Commercial Banks

Highest Educational Level Attained by Various Levels of Management

If it assumed that educational level is highly correlated with management ability or competence a suggestive measure of management depth can be developed by comparing percentage breakdowns of the highest educational level of highest paid officer with the mean highest education level of the second to fifth highest paid officer and with the mean highest education level attained by the top 10 officers.

It should be emphasized that educational level is understood not to be a perfect proxy for managerial competence. It is, however, the best measurable variable we could develop. It is certainly true that to some extent experience is a substitute for education. Moreover, the educational level of the Nation has risen very drastically over the past several decades which forecloses drawing any strong conclusions from comparison over a period of more than, say, two decades. However, this latter point reinforces the argument for using education as a proxy. The rise in the proportion of the population which are college graduates and the rise in the number and proportion going on to graduate school tends to make college education a self-selection device. If a small proportion of the population who had a high level of intelligence attended college, a college education would not be a good proxy for managerial competence. This argument holds irrespective of the value of education in increasing managerial competence. If this latter factor is added in, it should improve the correlation between education and managerial competence.

The data on highest educational level attained by the highest paid officers are presented in set of tables S, while the data on the second to fifth highest paid officers are presented in the set of tables T, and the average of the 10 highest paid is presented in the set of tables U. Comparing table S-1 with T-1 and U-1 it can be seen that educational level drops drastically from the highest paid to the average of the second to fifth highest paid, and then drops again when the average of the 10 highest paid is computed. The proportion of college graduates and those who have taken

some postgraduate work falls from 27 percent to 11 percent, and then to 6 percent.

The breakdowns by bank sizes class are very interesting. The heavy weight of the under $10 million size class in the total tends to distort the comparisons. However, the decline in all size classes as you move to successively lower levels of management is very substantial. This tends to demonstrate that to the extent educational level is a good proxy for managerial ability a problem of management succession exists. Moreover, these data suggest that the problem exists in all size classes of banks.

[35] TABLE S-1.—Highest education level of highest paid officer—All banks

[Percent of all banks within size class]

	Deposit size in millions of dollars					
	Over 100	50 to 100	25 to 50	10 to 25	Under 10	All
Less than 12 years	4	7	7	7	6	6
High school graduate—12 years	16	23	25	32	40	38
Some college, 13 to 15 years	19	18	25	25	31	29
College graduate, 16 years	35	31	24	25	16	18
More than 16 years	26	21	19	11	7	9
Total	100	100	100	100	100	100

TABLE T-1.—Highest education level of 2d to 5th highest paid officers—All banks

[Percent of all banks within size class]

	Deposit size in millions of dollars					
	Over 100	50 to 100	25 to 50	10 to 25	Under 10	All
Less than 12 years	15	15	16	15	16	16
High school graduate—12 years	6	9	7	8	21	18
Some college, 13 to 15 years	39	46	60	66	54	55
College graduate, 16 years	23	14	12	8	7	8
More than 16 years	17	16	5	3	2	3
Total	100	100	100	100	100	100

TABLE U-1.—Highest education level of top 10 officers—All banks

[Percent of all banks within size class]

	Deposit size in millions of dollars					
	Over 100	50 to 100	25 to 50	10 to 25	Under 10	All
Less than 12 years	6	11	10	13	16	15
High school graduate—12 years	7	12	14	12	16	15
Some college, 13 to 15 years	61	61	71	72	62	64
College graduate, 16 years	19	12	4	2	5	5
More than 16 years	7	4	1	1	1	1
Total	100	100	100	100	100	100

While it is true that larger banks have a higher proportion of top officers with high educational backgrounds relative to smaller size banks and that this relationship holds through all management levels surveyed, this does not prove that large banks have sufficiently trained management teams. There is greater need for higher training in the larger banks than would be needed in smaller banks. The management function in larger banks is more demanding and complex than is the same level job at smaller banks.

The unit-branch breakdowns of these three sets of tables reveal two distinct tendencies. First, in the highest paid category branch banks have a significantly higher proportion of college graduates and postgraduates than do unit banks, 39 to 24 percent, see tables S-2 and S-3. Moreover, this proportion is higher for branch banks in all size classes. The difference is especially large in the highest and the lowest size classes.

TABLE W-1.—Education and length of employment of 2d to 5th highest officers—All banks

[Percent of all banks within size class]

	Number of years of formal education					
	Under 12	12	13 to 15	16	Over 16	All
0 to 10	30	26	24	36	24	26
11 to 20	28	42	46	45	33	42
21 to 30	24	21	24	14	39	23
Over 30	18	11	6	5	7	9
Total	100	100	100	100	100	100
Percentage distribution	16	18	55	8	3	100

TABLE X-1.—Education and length of employment of top 10 officers—All banks

[Percent of all banks within size class]

	Number of years of formal education					
	Under 12	12	13 to 15	16	Over 16	All
0 to 10	21	15	20	40	15	20
11 to 20	27	42	42	39	18	40
21 to 30	36	33	32	20	57	32
Over 30	16	10	6	1	10	8
Total	100	100	100	100	100	100
Percentage distribution	15	15	64	5	1	100

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT NO. 662

Attachment to INX 22.

UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION

Civil No. 3849

UNITED STATES OF AMERICA, Plaintiff,

vs.

THIRD NATIONAL BANK IN NASHVILLE, AND NASHVILLE BANK AND TRUST COMPANY,

and

COMPTROLLER OF CURRENCY—INTERVENOR, Defendants.

Excerpts From Last F.D.I.C. Examination Report of Nashville Bank & Trust Co. Prior to Merger (INX 22)

Page		
Analyses of Examination Reports (Form 96D)		Five-Year Analysis of Examination Reports
line 5	1.	Net loans and discounts increased with each succeeding examination during the years 1959 through 1963.
line 19	2.	Surplus increased from $450,000 at the 1962 examination to $1,700,000 at the 1963 examination.
line 11	3.	Demand deposits totalled $24,625,100 on May 16, 1960.
Page		
line 66	6.	The percentage of overdue loans to total loans decreased in 1963.
line 68	7.	No loans were listed for special mention in 1963.
line 79	8.	Dividends declared on common capital increased in each succeeding year during the period 1959 through 1962, as shown below:

Year	Dividends
1959	$ 65,300
1960	81,700
1961	89,800
1962	98,000

line 80 9. Net profits after dividends increased in each succeeding year during the period 1958 through 1962, as shown below:

Year	Dividends
1958	$ 41,900
1959	118,400
1960	268,200
1961	280,900
1962	282,500

Page 4 10. Net income before related taxes and dividends for the years 1960 through 1962 and for the period January 1, 1963 to November 4, 1963 was as follows:

1960	$642,334
1961	698,967
1962	641,594
11/1/63 to 11/4/63	651,581

Trend of Deposits

Page 10 11. Average demand deposits, exclusive of public funds, increased in each year during the period 1958 through 1962:

Year	Average Demand Deposits
1958	$17,155,000
1959	18,625,000
1960	18,810,000
1961	19,719,000
1962	19,810,000

Page 10 12. Average time deposits, exclusive of public funds, increased in each year during the period 1958 through 1962:

Year	Average Time Deposits
1958	$10,519,000
1959	10,713,000
1960	11,234,000
1961	12,246,000
1962	14,620,000

Page 10 13. Average total deposits increased in each year during the period 1958 through 1962:

Year	Average Total Deposits
1958	$31,877,000
1959	34,240,000
1960	36,428,000
1961	40,425,000
1962	42,755,000

Conclusions and Recommendations

Page 3 14. Total classified loans were reduced in 1963. Loans classified doubtful and loss were fully covered by the valuation allowance.

15. Improvement was noted in the credit files in 1963, after the Examiner had recommended closer supervision of credit files in 1962. (Examination Report, INX 21) Whereas 61 loans were listed as lacking satisfactory credit information in 1962, only 35 loans were so listed in 1963. (Compare page 7c of 1962 Report, INX 21, with page 7b of 1963 Report, INX 22)

Loans and Discounts

Page 7 16. The distribution of loans among various classes of borrowers was satisfactory.

Page 7 17. Large and important loan applications were considered by the executive committee prior to disbursement of funds; and all loans were subsequently approved by the executive committee. Overdue loans were segregated and reviewed daily by the active officers and demand and important maturing loans were discussed by the executive committee at regular meetings. Loan collateral was reviewed and appraised periodically. Interest on loans was collected at least every six months, and the maturity of notes was not advanced upon the payment of interest without requiring a formal renewal note or extension agreement. In most instances, the bank had prior understandings with borrowers as to the amortization of long-term loans, loans of a capital nature and real estate loans.

Page 7 18. Mortgages, trust deeds and similar documents relating to loans secured by real estate and chattels were properly recorded and filed. Assigned insurance policies, satisfactory appraisals, tax receipts and title policies or opinions were available and in satisfactory order.

Page 7-1 19. Installment loans of $2,600,134 represented approximately 12% of the total loans outstanding in 1963.

Page 7-1 20. Of the $2,232,790 in automobile loans outstanding in 1963, direct automobile loans accounted for 93%. ($2,077,418)

Page 7-1 21. Adequate credit investigations were made before direct installment loans were granted. Installment loans were considered delinquent after being overdue for five days, and delinquent accounts were then segregated. Refinancing of installment loans was not extensive.

Furniture and Fixtures

Page 8 22. Furniture and fixtures at the main office and branch were modern and suitable for the needs of the institution.

Supervision by Directors

Page 13 23. The Board of Directors met quarterly on call. The minutes of meetings properly reflected cognizance and approval of actions taken by committees and officers exercising delegated authority. The expense account was examined by the Board at each meeting and a complete record of income, expenses, profits on assets sold or exchanged, recoveries, and losses and charge-offs was entered upon the minute book at periodic intervals.

24. The minutes reflected a thorough consideration by the Board of the last examination report of the Federal Deposit Insurance Corporation.

Internal Routine and Controls

Page 15 — 25. The audit program of the bank was satisfactory as to scope and frequency. Officers and employees were not notified in advance and the audit was performed by persons not auditing their own work. The auditor reported regularly and directly to the Board of Directors or a committee thereof.

Management and Control

Page B — 26. The directorate was composed of men of independent judgment who were influential in the community.

27. The number and compensation of officers and employees was satisfactory.

28. The loan and investment accounts did not reflect the use of the bank's funds for any purpose inconsistent with the maintenance of sound credit conditions.

29. The bank was not in a weakened or extended condition.

Conclusions and Recommendations

(Confidential Section)

Page A — 30. President Hackworth was interested in obtaining new business.

31. Reduction in previously criticized loans was regarded as fairly satisfactory and improvement was noted in the credit files.

32. Earnings of the bank continued to be satisfactory.

[fol. 1] IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT NO. 671

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, NORTHERN DIVISION AT NASHVILLE.

Civil No. 3849

THE UNITED STATES OF AMERICA, Complainant,

vs.

THIRD NATIONAL BANK IN NASHVILLE AND THE NASHVILLE BANK AND TRUST COMPANY, Defendants.

* * * * * * *

The deposition of MR. W. S. HACKWORTH, taken on behalf of the complainant, on the 23rd day of October, 1964, * * *.

* * * * * * *

[fol. 2] MR. W. S. HACKWORTH, after having been first duly sworn testified as follows:

Examination.

By Mr. Degnan:

Q. Would you please state your full name and address?

A. W. S. Hackworth, 53 W, Royal Oaks Apartments, Nashville.

[fols. 3-4] Q. And what is your business address, Mr. Hackworth?

A. 315 Union Street.

Q. What office is that? Is that the office of the Nashville Bank and Trust Company?

A. That's right.

Q. What is your position with the 3rd National Bank?

A. Vice Chairman of the Board.

Q. And you are also a director, I take it?

A. That's right.

Q. What was your position with the Nashville Bank and Trust Company, prior to the merger of 3rd National?

A. President.

Q. How long had you been President of the Nashville Bank and Trust Company?

A. Since February 8th, I believe.

Q. February 8th of what year?

A. 1956.

* * * * * * *

[fols. 5-25] Q. Prior to February 8th, 1956, did you have any—what was the extent of your experience in the banking—commercial banking field?

A. Oh, nothing, except what I had serving on the Board of Directors.

* * * * * * *

[fol. 26] Q. Which other Nashville banks were providing trust service, Mr. Hackworth?

A. Commerce Union and 1st American and 3rd National.

[fol. 27] Q. Do you have an idea of the approximate share of that—of the business done by those four banks, each had—the trust business done by those four banks, that each had?

A. No, I don't know what the trust business was.

Q. So far as you know, the trust company may have been—the Nashville Bank and Trust Company may have been the largest in that field in Nashville?

A. Or it might have been the smallest.

Q. So far as you know.

A. Yes.

Q. Do you know whether any other Nashville bank had a trust department?

A. I don't think so.

Q. I think this has already been gone over with Mr. Hill, but I will ask you, to be sure. Did the Nashville Bank and Trust Company conduct any trust business in its branch out on Murfreesboro Road?

A. No.

Q. And do you know whether or not all the others—that is, Commerce Union, 3rd National and 1st American—con-

ducted all their trust business in their main downtown offices?

A. I believe so.

Q. And for the record, the 1st American's main office is where, in relation to the Nashville Trust Company's office?

A. Oh, almost directly across the street.

[fol. 28] Q. How about Commerce Union?

A. It's across the street from 1st American.

Q. And 3rd National?

A. Well, it's about two blocks away.

Q. Two blocks?

A. A block and ~~a~~ half. ~~We~~ are in the middle of the block, and you have to walk the middle of the block to get to Fourth Avenue, then one block down.

Q. You go around the corner and go down a few doors to Nashville Bank and Trust Company?

A. Yes.

Q. Did you find that there was a rivalry between the 1st American and the Nashville Trust Company for the trust business?

A. We certainly did.

Q. There was?

A. Yes.

Q. How substantial would you say that rivalry was?

A. They just wanted all of it.

Q. They wanted all of the trust business?

A. That's right.

Q. What was the attitude of Nashville Trust Company?

A. We wanted it all.

Q. So both of you were going out after it?

A. That's right.

[fol. 29] Q. How about Commerce Union?

A. Same thing.

Q. And 3rd National?

A. Same thing.

Q. Which were the officers in the Nashville Trust Company—how did the Nashville Trust Company go about getting all of that business, or trying to get all of that trust business?

A. Well, we had an extensive advertising plan that we mailed out to advantage, of leaving your trust with an institution, rather than an individual. And we sent out all of our statements, asking them about their trusts and

inviting them to come in, or invite—Say, if they were interested, then we had one man assigned to call on these prospects.

Q. Who was that man?

A. Mr. Overton Thompson.

Q. And approximately how much of his time did he spend calling on prospects?

A. Not over half—not as much as he should, because so many people wanted him to handle their trusts personally, when they came in the office.

Q. He was a very popular man, I take it?

A. Yes, that's right.

Q. Now, you mention an extensive advertising campaign. How did that campaign—what media were used in the campaign?

A. Well, we engaged the services—I don't recall the name [fol. 30] now—but it's a national service. We turned names of everybody in the area, that we thought might be good prospects, and they mailed it out under our signature.

Q. I see. And how did you ascertain the names of those persons you thought were good trust prospects?

A. Various ways.

Q. Could you describe them?

A. Well, generally, we tried to find out the ones that we thought had enough money to justify a trust, and it's difficult to do, to tell you the truth, because some people that you don't think have any money, they end up with more than the ones you think have a whole lot. But I don't say we had a very good or a very bad system. We used any means we could think of. For instance, we had the old leading families of Murfreesboro and Clarksville, and the surrounding towns, and Nashville, and we would mail this information out to them.

Q. How much did you expend on that service? That is a national service, is it?

A. Yes. I don't know how much we expended on that particular service, but we had, I think, an advertising budget that was probably out of line with the larger banks. We were spending between forty-five and fifty thousand a year on advertising. That is including the trust advertising—it included finance advertising and also the real estate.

Q. When you say, "finance advertising," that refers to [fol. 31] what type loans?

A. Small loans.

Q. Is that installment loans?

A. Finance and installment loans.

Q. That is trust advertising, finance advertising and real estate advertising?

A. Yes.

Q. Was there any other form of advertising?

A. You always have a certain amount of institutional advertising.

Q. And that was not included in the forty-five to fifty thousand, that institutional advertising?

A. All of it.

Q. Would the records of the bank show more precisely the expenditures for this advertising and the various forms of advertising?

A. Well, no. We can find out what we paid the national service for the trust, but the other is difficult to break down. One part of it will help another, and one, another. And we couldn't allocate it very closely.

Q. Did you consider that the Nashville Trust Company should have been spending more or less, or spending just about the right amount for advertising?

A. I thought they were spending to much. I was like Mr. Wannamaker, I knew we were wasting part of it but [fol. 32] I never could find out which part we were wasting.

Q. Now, I believe you mentioned you thought it was a little out of line with what the other banks were spending on advertising. Would you explain what you meant by that?

A. It seemed to me that the larger banks were in the newspaper, on the radio or television all the time, and we couldn't afford to stay there.

Q. Do you know what they were spending for advertising?

A. No. I know it was much more than that.

Q. Yet, you did feel that the Trust Company was, in proportion to its resources, was making heavy expenditures for advertising?

A. I did, yes.

Q. I will ask you an obvious question. What was the reason for making these expenditures?

A. Well, I think the answer is just as obvious: We had to advertise to compete with these larger institutions.

Q. And you were making every effort to compete with these larger institutions, is that correct?

A. Yes.

Q. And what success—You mentioned trust services were stressed, and installment loans and financing were stressed, and real estate loans stressed; were other services, offered by the bank, stressed?

A. Oh, yes.

[fol. 33] Q. What were some of those?

A. Oh, I think that would come under institutional advertising, where we would say that we offered full service; and we couldn't say that we offered convenience, because we didn't have the branch banks.

Q. Does the Trust Company retain copies of the advertising placed in the various media?

A. In the newspapers.

Q. Would you have copies of newspaper advertising?

A. That's right.

Q. Any other advertising?

A. Yes. We advertised, some, on the radio and some over T.V.

Q. In which newspapers did you place this advertising?

A. In both.

Q. Both what, the Nashville newspapers?

A. Both Nashville newspapers, the Nashville Banner and Tennessean.

Q. Did you advertise in any other newspapers, to any significant extent?

A. No.

Q. Which radio stations, if any, did you advertise in?

A. I believe WSIX was the one that we did most of our advertising over.

Q. And where is the broadcasting station, WSIX, where [fol. 34] is it stationed?

A. It's out on Murfreesboro Road.

Q. It is here in Nashville?

A. Yes.

Q. And the television stations?

A. Same.

Q. Do you advertise in any television stations outside of Nashville?

A. No.

Q. Now, prior to the merger with 3rd, what were the main commercial banking services, as distinguished from trust services, offered by the Nashville Bank and Trust Company?

A. I think we offered a full service, with the exception of correspondent banks.

Q. And what are the elements which make up a full service commercial banking business?

A. Well, that is loans of every type: Savings, commercial, individual, and instalment loans.

Q. You say commercial. Commercial what? Commercial loans?

A. Commercial loans or business loans.

Q. Are those loans mostly secured or unsecured loans?

A. I would say most of the business loans are unsecured; some of them are secured. Large companies who have built up an inventory one time a year, and sell it out, say, in [fol. 35] Christmas or the fall, we finance them to build up their inventory.

Q. Are there any other types of service which make up this full service commercial banking operation?

A. Oh, I can't think of any.

Q. How about checking accounts, isn't that an important part?

A. I said individual accounts.

Q. I see. That's fine. Were you a member—was the Nashville Bank and Trust Company a member of the Foundation for Commercial Banks? I believe that is the organization which sponsors these advertisements about urging people to, ". . . do business with your full service commercial bank."

A. I don't believe—for several years—but I don't believe we did in the last two years. I am not sure about that. No, I'll take that back, we did, yes. I was thinking about something else that we wouldn't donate to.

Q. Which other banks in Nashville would you describe as offering the full commercial banking service?

A. I would say all the larger banks in Nashville.

Q. Would you name them?

A. The 1st American, Commerce Union, 3rd, Nashville Trust, and I assume, Capital City, but I'm not sure about that.

Q. How about Citizens?

A. I really don't know much about Citizens Bank.

[fol. 36] Q. And how about the Bank of Goodlettsville?

A. I don't know about that.

Q. How about the bank out in White's Creek?

A. I don't know.

Q. And were you engaging in rivalry with these banks that you have mentioned, that were offering full service commercial banking?

A. Yes.

Q. How substantial—Was that a substantial rivalry with all of those banks?

A. Well, we did everything we could, sure, to get the accounts.

Q. What are some of the things that you did do to get the accounts?

A. Well, we advertised, as we mentioned here before, and then we had a solicitation force.

Q. Who was on that solicitation force?

A. Well, now, two top men. All of us were supposed to be on it—all the officers—employees too, for that matter. But the men who actually were charged with that duty were Mr. Buquo and Mr. K. O. Primm.

Q. And did Mr. Primm work under Mr. Buquo, or vice versa?

A. Mr. Primm was supposed to work under Mr. Buquo, but he didn't like to work under anybody.

Q. And I believe you mentioned that all the employees [fols. 37-38] of the bank were actually enlisted in this purpose of acquiring new business?

A. That's right.

Q. And how was this done?

A. Oh, we would hand out cards to different ones to call on—not only prospective customers, but our existing customers—call on them and let them know we appreciated their business and wanted them to continue banking with us.

Q. I can understand the existing customers, and also the new customers; how did you identify prospective customers for your bank?

A. That is a very difficult question to answer. I was never able to find out how new people were coming into

town, in any great number. Of course, they are your best prospects, your new business and new citizens moving into the community.

Now, the banks that have correspondent banks over the country, they enjoy a great advantage over you. Because, if Mr. Jones from New York or Washington moves to Nashville, well, the corresponding bank will tip off the bank they bank with in this city.

* * * * * * *

[fol. 39] Q. When you went out to call on these prospective customers, did you, sometimes, find evidence that other banks had been out to call on them too?

A. Almost invariably.

Q. Which banks did you run up against in this connection?

A. All the three major banks.

Q. But that didn't discourage you from continuing?

[fol. 40] A. No, we tried.

Q. Did it even make you—provide an incentive to try a little harder?

A. I would think so.

Q. Like the Rent-A-Car business, you were smaller so you were going to try harder?

A. That's right. I might add here, for clarification, that the larger banks, with more officer personnel assigned to that, they could cover much more territory than we could possibly cover. I mean by, "territory," more prospects.

Q. What made it possible for the larger banks to do that?

A. I think I just explained that to you. They usually got advance information about who was coming and when.

Q. This is because they were able to maintain larger balances with the banks in other cities?

A. Well, not only that—I think that's a good point and ought to be clarified.

There are many people moving into the cities now, and suburbs, that come from the areas that they are served by the Nashville Banks. And if their correspondent—say, from a bank in Lewisburg—and some man had been promoted and moving to Lewisburg, the correspondent bank will advise the bank, the home bank.

Q. Only the largest banks in the city had those extensive correspondent connections?

[fol. 41] A. That's right. We were severly handicapped on that.

Q. And this is a result of the fact that they have much larger resources?

A. That's right.

Q. And that is, also, I suppose, the reason that they are able to employ more personnel than your bank could employ, to call on customers?

A. Sure.

Q. And would you consider, because of these factors and similar factors, that the larger banks had a—something of a competitive advantage over the Nashville Bank and Trust Company in soliciting new business?

A. Definitely.

Q. Would you consider that these larger banks also have something of a competitive advantage over the Capital City Bank in soliciting business?

A. Yes.

Q. And Citizens Bank?

A. Yes.

Q. And the Bank of Goodlettsville?

A. I don't think—I don't believe they would, no. Goodlettsville, that's a local bank.

Q. I take it, you found from your experience that for the Nashville Trust Company to compete with the larger banks, required you to stay on your toes and make strenu-[fol. 42] ous efforts to get new business, to overcome, to some extent, the handicap you experience by reason of your smaller size?

A. Yes. And there is another very important point there too. I don't know whether it should be mentioned now. I think I had it in my affidavit filed: That we were severely handicapped because many people want to do business with the bank that is closest to them, and lack of branch banks, really, is one of our greatest handicaps.

Q. We will take that up at a subsequent point.

(Note: At 10:45 A.M. a recess was taken until 11:07 A.M. at which time the following proceedings were had.)

Q. Did the Nashville Bank and Trust Company have fixed charges for checking account services and various other services performed by the bank? Did you have a schedule of charges?

A. Yes. If a customer's balance was in an amount—I suppose that's what you have reference to?

Q. That type of thing, yes.

A. Yes, we did.

Q. Did you have a schedule of charges for services in the trust department?

A. No, I don't believe any bank in Nashville has. They are supposed to have, but most of the trusts are set up by negotiation.

Q. How, then, would it be determined the charges to be [fol. 43] made against the trust account for various services rendered?

A. I would say there are three things that entered into it. One would be, whether or not they had a large concentration and not much work to do in stocks that they wanted to hold—the beneficiaries wanted to hold. And another was real estate. Where you have real estate in a trust, it costs much more to service it.

Q. Well, what I am trying to get at is: I suppose that your trust department showed a gross income over the years, and that income was derived from the various services that you performed. Now, you must have had some way of arriving at the actual charges that were made. Wouldn't there have to be a schedule of some type?

A. We have a schedule, sure, but it is, more or less, a proposed schedule. Because, I think, you will find, in all the trust companies in Nashville, there are various charges to different trusts.

Q. Now, did you also have schedules of charges—interest rates charged for loans at various times?

A. Yes.

Q. You did?

A. Yes.

Q. What were the, say, the range of interest rates charged for commercial and industrial loans by the Nashville Trust Company?

[fol. 44] A. That depended on the type of credit. Some large borrower, for instance, like Murray-Ohio Company,

had a wonderful statement and they could borrow money at the prime rate, anywhere. So if you do business with them you have to loan them the money at the prime rate.

Q. Did you loan them money at the prime rate?

A. We did.

Q. What were some of the other interest rates which you charged?

A. Well, I believe, we charged five percent on cash value of insurance. That is one of our lower rates.

Q. And some of the others?

A. We charged five and a half to six.

Q. Do you know if there is any schedule actually prepared, that is in the bank records, which will show what these various rates were?

A. Yes, there was on savings accounts and insurance.

Q. Loans on cash value of insurance?

A. Yes.

Q. What rate did you pay on savings accounts—book savings accounts?

A. Four percent, if it stayed there as long as a year.

Q. Would that be for a certificate of deposit for a year?

A. No, if the money in savings stayed there for a year.

Q. What were the other rates?

[fol. 45] A. Well, a certificate of deposit, would start it out, I think, at three percent for ninety days, and three and a half percent for six months. But, now, you can pay—if you want the money—you are permitted to pay—in competition—you pay the four percent, even for a ninety day certificate.

Q. And what were the rates of the other Nashville banks on savings accounts?

A. The same.

Q. So the rates of the Nashville Bank and Trust Company were the same as the other commercial banks in Nashville?

A. That's right.

Q. How about your service charges on checking accounts? How did they compare with the service charges of the other Nashville banks?

A. I believe that is standard in all the banks.

Q. They were comparable?

A. Yes.

Q. And how about your interest rates on loans secured by cash value of life insurance? How did that compare with the rates charged for such loans by the other Nashville banks?

A. I am not sure of that.

Q. You don't know?

A. No.

Q. How about the—I gather, from what you said, that the loan to prime companies would be the same as the loan—[fols. 46-49] the rate charged by other Nashville banks?

A. Yes.

Q. What is the prime rate, currently?

A. Four and a half.

Q. And you define, in general, that the interest rates charged by the Nashville Trust Company were competitive with the other banks in Nashville?

A. Surely, they had to be.

Q. And they were?

A. They were.

* * * * * * *

[fol. 50] Q. In 1956 the Nashville Trust Company changed it's name to the Nashville Bank and Trust Company, is that correct?

[fol. 51] A. That's correct.

Q. Did you have anything to do with the change in name at that time?

A. I had it changed.

Q. Why did you do that, sir?

A. Well, I was standing in the middle of the lobby, late one afternoon, and a man came in with a check and said, "Can you tell me where I can get this check cashed?"

I said, "You're standing right in the middle of a bank."

And he said, "I thought this was a trust company."

So I thought it was high time we had the word, "bank," in the corporate name. I think it was a good move.

* * * * * * *

[fol. 52] Q. At the time you took over, what, approximately, were the deposits of the Nashville Trust Company?

A. About twenty million.

Q. And what proportion of those were demand deposits?

A. I don't remember.

Q. Was it less than half?

A. I would say it was.

Q. And at the time of the merger in 1964, what were the just prior to the merger, what were the total deposits of the trust company?

A. Oh, that would be about the end of '63?

Q. I think you have a statement as of June 30th, '64, in here.

A. (Checking records.) Forty-five million, four seventy-one, one twenty-seven.

Q. So, from the time that you took over in 1956, until shortly before the merger, there was an increase of about twenty-five million in deposits, is that correct?

A. That's correct.

Q. Which is over a hundred percent, I guess?

A. Slightly.

[fols. 53-57] Q. Do you know of any Nashville bank which has had a greater percentage increase in deposits in that period of time, then the Nashville Trust Company?

A. No, I don't. But I really don't think the percentage of increase is a very reliable criterion. Because if you have one dollar and you find two, then you have increased a hundred percent. The more money that you have, the higher—the more difficult it is to show a higher percentage of increase. Do you see what I mean?

Q. I understand that, but the fact is, you were growing at a faster rate during that period, were you not, than any other bank in Nashville?

A. Well, I wouldn't say through this whole period. I think we were, up to 1960 or '61.

* * * * * * *

[fol. 58] Q. How would you describe, in general, the financial condition of the Nashville Bank and Trust Company, in recent years?

A. Oh, I think it was very sound.

Q. And what were the factors which led you to that conclusion?

A. Well, we had a satisfactory reserve, satisfactory surplus, satisfactory reserve for loss on loans.

Q. Okay. Now, a satisfactory reserve, what reserves do you refer to.

A. I refer to what is here—surplus and undivided profits. We don't break down—it's not broken down here, on reserve for bad debts. I think it's important—some people don't.

Q. Approximately, what was the amount of your reserve for bad debts?

A. Approximately one million dollars.

Q. What, in recent years, had been your actual loss experience on loans?

A. Well, in recent years it has been a little sad.

Q. Could you specify?

A. I would hate to call names.

Q. Please don't name names. I was just wondering if you could get a—give us an idea of how much you charged off because of bad loans?

[fol. 59] A. I think we were averaging a hundred thousand dollars a year.

Q. And you had reserves of about a million dollars to cover those losses?

A. Yes.

Q. So you felt that you were in a good position to cover your loan losses?

A. Yes. Of course, we weren't very happy over it.

Q. How about the relationship of your capital surplus and undivided profits, to your total assets, or to your total deposits? Did you find, in that respect, the bank was in a strong position?

A. I think so.

Q. Why do you say that?

A. Well, our surplus and undivided profits, $1,700,000, compared with a capital stock of one million, six thirty-three, three hundred shares. Capital stock was one million six hundred thirty three thousand three hundred dollars. (Sic.) $1,633,300.00

Q. Do you know, approximately, the percentage ratio of the bank's capital surplus and undivided profits, to it's average total assets in recent years?

A. No, but I can figure it out very easily.

Q. Well, We can figure it out. I thought you might know. Did you feel, however, that that ratio was satisfactory for the bank?

[fol. 60] A. Yes.

Q. Do you know how that ratio compared with some of the other banks in Nashville?

A. Our reserve—I mean, surplus, and undivided profits was lower, I think, than most of the banks—some of them with several times this capital—but ours was equal to the capital. And, I believe, it was nineteen hundred—I'll take a look here.

I believe it was '61 we built that up—transferred from reserve to surplus.

Q. Well, abstracting, a moment, from whether the funds were carried in the capital stock accounts or surplus accounts, or undivided profits account—all of those represent capital, do they not?

A. Well, it's money available that you can spend, yes.

Q. And if we consider, not the absolute amount in those accounts, but their ratio to the bank's total assets, or total deposits, whichever you wish, how did Nashville Bank and Trust Company compare with the other banks in Nashville?

A. I really don't know.

Q. You don't know?

A. No.

Q. My impression is that Nashville Bank and Trust Company was in an unusually strong position in this respect—had a high ratio of capital to total deposits. But you don't [fol. 61] know whether that was the case, or not?

A. I think it was quite satisfactory, but how it compared with the other banks, I don't know.

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[fol. 62] Q. Now, during the period of time we pointed out that the bank increased in deposits from about twenty million to about forty five million, is it a fair statement that despite that high rate of growth, the bank was able to maintain a strong capital position throughout that period?

A. Yes.

Q. How was that done? Were new shares sold?

A. No.

Q. How were you able to do that?

A. I think we built up our reserve, largely, by not paying dividends commensurate with the earnings.

Q. So that the earnings, through this bank, at this period of time were adequate to maintain a strong capital position, were they not?

[fol. 63] A. That's right.

Q. What had been the earnings record of the Nashville Bank and Trust Company in the past eight years, or so?

A. Well, I don't know whether I have that, or not.

Mr. Hunt: Off the record.

(Discussion held off the record.)

Q. My question referred to the period from 1956 to the merger.

A. 1956 to the merger?

Q. Yes.

A. Is this an exhibit? This is correct.

Q. Let's mark it as an exhibit.

(Document referred to above received by the Reporter, marked C-2, dated, initialed and attached hereto.)

Q. I show you a document marked C-2, Mr. Hackworth, and ask you if you recognize that information which appears on that document?

A. I do.

Q. And what—would you read the caption on the document?

A. (Reading) "Net earnings and value of stock, Nashville Bank and Trust Company."

That value is the book value and not necessarily the sales value.

Q. And is the information which appears on that document, accurate?

[fol. 64] A. Yes.

Q. Have you seen the original of that document before?

A. I am quite sure I prepared it.

Q. I might state, for the record, that that was among the documents which were produced by Mr. Hill when his deposition was taken on October 20th, in this room.

Now, referring to Exhibit C-2, to refresh your recollection, what does that show as to the earnings after taxes, for Nashville Bank and Trust Company, for the year 1955?

A. Six dollars and six cents.

Q. Would you state it in terms of total earnings, rather than earnings per share?

A. Ninety-eight thousand, nine sixty-three.

Q. And for the year 1956?

A. A hundred and twenty-nine thousand, eight thirty-two.

Q. And for the year—what is the last year on that list?

A. 1962.

Q. What were the earnings?

A. Three hundred and eighty thousand, four seventy-four.

Q. As I calculate it, earnings in 1962 were a little over three times what they were in 1956, is that correct?

A. That's correct.

Q. Do you consider that as a satisfactory record of earnings for the Nashville Bank and Trust Company?

[fol. 65] A. The way we were operating, yes, but I wouldn't say it was a satisfactory earning. I am never satisfied with it.

Q. That is the way we like to hear you talk. I guess that's the way any good bank president should talk. But it is a good record of earnings, is it not?

A. You have changed your question now, whether it's satisfactory or good.

Q. I will say that this is—is it a good earnings record—would you consider it to be?

A. I would think so, per share.

Q. Do you know what the earnings record of the three largest banks in Nashville has been over about that period of time?

A. I do not.

Q. Do you know what the earnings record of the 3rd National Bank has been over that period of time?

A. No.

Q. In 1962, if you recall, what were the dividends paid? I don't think it appears on that document.

A. $380,474 net earnings for 1962.

Q. And the next question is: If you recall, what were the dollars and cents, in dividends, paid in 1962, to shareholders?

A. A dollar and twenty-five cents quarterly, and a dollar extra at the end of the year.

[fols. 66-67] Q. A total of six dollars?

A. That's right.

Q. That's for the year? And that means, in relation to the earnings per share, you retained approximately how many dollars?

A. Well, seventeen.

Q. Seventeen dollars were retained?

A. Yes.

* * * * * * *

[fol. 68] Q. (Interposing) Let me ask a couple of questions. There is no date on that that identifies the date that document was prepared, is that correct?

A. No, except it was prepared after our stockholder's meeting in January.

Q. That was January of 1964?

A. Yes.

Q. So it was prepared after the stockholder's meeting, or before?

A. At the time.

Q. Do you recall what date the stockholder's meeting was held, in January?

A. No.

Q. Was it towards the end?

A. No, it was held—I believe, our meeting was held on the third Thursday.

Q. In January?

A. Yes.

Q. Thank you. Now, I would like to read one statement made in this document. But before I do that, do you know [fol. 69] who prepared that Exhibit C-3?

A. Yes, I did.

Q. And the statement is made, in Exhibit C-3, that: ". . . . President Hackworth stated that 1963 was the best year from an operations standpoint in the bank's history and that all departments showed a steady increase."

Did you make that statement, Mr. Hackworth?

A. Yes.

Q. Is that an accurate statement?

A. Yes. But I should like to add here, I don't think it was much better than 1962—showed some improvement.

Q. So '62 was a good year too?

A. Yes.

Q. And in 1963, did you also pay an extra dividend of a dollar?

A. Yes.

Q. Did you pay such a dividend in 1961?

A. I have forgotten when we went to that extra dollar. I believe it was '61—yes, I think it was.

Q. What was the reason for paying the special extra dividend?

A. Because of our earnings.

Q. They justified paying that extra dividend?

A. Yes.

Q. Now, reading again from the document, C-3: ". . . . [fols. 70-71] Both, Chairman Hill and President Hackworth expressed themselves as feeling that the bank would continue to expand and would have another good year in 1964."

Was that your feeling, Mr. Hackworth?

A. Yes. But I wasn't so optimistic on the rate at which it continued to expand.

Q. You did feel that it would continue to expand and have another good year in 1964, though?

A. Yes.

Q. And did Mr. Hill express that thought to you?

A. Yes, he approved that for release.

* * * * * * *

[fol. 72] Q. On the basis of the Nashville Trust Company's growth, and its capital adequacy, and its earnings record, would you say that it was competing effectively and successfully over the past eight years, prior to the merger with the 3rd National?

A. I would say we weren't—were not.

Q. I find that a little hard to understand, in view of the very excellent record that the bank had compiled.

A. Well, I think we did well, and I—for the first few years after I went there. Maybe I was getting older and slowing [fol. 73] down, but if you will notice, in 1961—on this report here—our total assets on December 20th, of total business, 1961, was forty-nine million, nine hundred and nineteen thousand, four hundred and forty; and at the end of December 31st, 1962, fifty-one million, three hundred thirty-five thousand, one seventy-six; at the end of 1963 there were still only fifty-one million, nine hundred and thirty thousand, eight hundred and seventy-nine.

And I would like to interject, here, and say, that you reach a plateau, unless you keep expanding. We had definitely reached that plateau, in my opinion.

Q. You are basing that on the fact that the growth in the last two or three years had not been as great as in the previous years?

A. Yes, it had leveled off, practically. We spent considerable amounts of money to build a garage. We thought that might overcome some of our difficulty—and it did help. But with one location, one central office and one branch, why, you simply are limited to the number of people that you can attract into that one institution.

Now, the reason for that is that in the individual—I don't know whether people are getting lazy—I'm probably guilty of it myself—they are going to patronize the most convenient place to them, nine times out of ten.

For instance, I own stock in Standard Oil. Yet, the most [fol. 74] convenient filling station is a Shell Station, right at my door. I buy gasoline from Shell, for no other reason than convenience.

People, although they like the garage and what we have done to try to pull business downtown, they just simply are—Good friends will tell you, "I would like to bank with you, and we like you, but I'm not going to fight that traffic downtown and back."

The results showed that they wouldn't—they quit coming.

Q. Results showed a good many of them did?

A. Not the last two years. We didn't get so many new accounts in the last two years. I just finished reading that.

Q. Your growth may have slowed down, somewhat, in the last two years——

A. (Interposing) Last three.

Q. During this entire period, you only had—until 1959, you had only one office. In 1959 you acquired another office.

A. That's right.

Q. And this branch situation, during that period of time, did not prevent you from growing at a faster rate than any other bank in Nashville, did it?

A. That's right. I would like to say this—it may be out of order—if it is, you can strike it.

I think I was very fortunate in having a world of friends, [fol. 75] and still more fortunate that many of my friends had money.

It is just like selling life insurance. When you go into life insurance business, you can go out and sell members of your family and your friends, and when you get through with that, I have seen them almost starve to death. That was the kind of position we were in. I didn't have many more to go.

Q. Did the Nashville Trust Company have some officers whom you regarded as being good bankers?

A. Yes.

Q. Would you identify some of those individuals?

A. In the banking department, I think, Mr. Young is a good banker; and so is Mr. Aldred.

Q. How about some of the others in the banking department? How about Mr. Hardcastle?

A. Mr. Hardcastle is a bookkeeper.

Q. Is he doing a pretty good job at the bank?

A. Yes.

Q. How about the mortgage department?

A. I think we have an excellent mortgage department. Mr. Thomas is some seventy-five or seventy-six years old, but he is still good.

Q. How about Mr. Williams?

A. He is good. He is over sixty.

[fol. 76] Q. And the new business department? I think you have already commented that Mr. Primm was very energetic and an effective solicitor of business for you?

A. Very.

Q. How about Mr. Buquo?

A. He is very splendid too.

Q. There is one in personnel. Is that a secretary?

A. A secretary.

Q. And the real estate department, who, in that department, would you single out for special mention?

A. Only one, Mr. Brush, and he died and was buried day before yesterday.

Q. And how long had he been with the Nashville Trust Company?

A. I think, some twenty-five or thirty years.

Q. So that the Trust Company had successfully retained a very competent man in that position, over quite a long period of time, had it not?

A. That's right.

Q. And the trust department: Who, in that department, do you regard as being good trust officers?

A. Well, I think we had three splendid ones in that department: Mr. Parker, Mr. Thompson and Mr. Sory.

Q. And do all of these people, that you have listed here, are they now employed by the 3rd National Bank, with the

[fols. 77-78] exception, of course, of the deceased Mr. Brush?
A. All of them.

* * * * * * *

[fol. 79] Mr. Degnan:

Q. Did the Nashville Bank and Trust Company ever evaluate it's officers' performance?

A. Yes. Probably, no. Mr. Hill and I talked about them several times.

Q. Do you have any records showing the result of this evaluation?

A. No.

Q. Do you have a personnel department, of any sort, there?

A. No. Mr. Young, in the banking department, he hired the employees of the banking department, and Mr. Parker, for the trust department.

[fol. 80] Q. Now, you indicated in one of your documents attached with the answer of the Nashville Bank and Trust Company, that after the merger was announced, several other banks approached some of your employees with offers to go to work for these other banks. Do you recall that?

A. Well, several said they did. I don't know that they actually did.

Q. Which were those?

A. Mr. Mathis was one, in the banking department.

Q. Who else?

A. Of course, the President of 1st American took Mr. Primm.

Q. Anybody else?

A. And the rest of them—yes, Mr. Yokley, our discount manager, he had a chance to go with another bank.

Q. Were those all Nashville banks, that made these approaches?

A. All except one. I believe, Mathis was in Dickson—the bank in Dickson, Tennessee.

Q. In the past, have you had it come to your attention that other banks were interested in hiring the employees of the Nashville Bank and Trust Company?

A. Well, the only one that—the Capital City hired our discount teller.

Q. And what was his name?
[fols. 81-89] A. Pendergrass.
Q. Apparently, these banks considered that these employees were desirable employees for hiring?
A. Sure.
Q. Would you have liked to have retained those employees to work at your bank?
A. Not all of them.
Q. We won't pursue that.
A. I'd hate to name them.

* * * * * * *

[fols. 90-112] Q. I am not talking, now, about the branches they may have established in past years. I am talking about the opportunity for getting new locations in the county.
A. Well, they are hard to find now. They are not building any more.
Q. My point is, they are hard to find for Commerce Union and 3rd National, as well as Nashville Bank and Trust Company?
A. They are now, but the time they built these branches, which they have already established, it wasn't so hard to find.

* * * * * * *

[fol. 113] Q. Mr. Hackworth, I believe you testified that you thought the merger of the Nashville Bank and Trust Company with the 3rd National was a business necessity, is that correct?
A. I certainly think so.
Q. When did you first reach that conclusion?
A. Oh, not with the 3rd National, necessarily. I reached it some time ago.
Q. How long ago?
A. Three years ago, at least, that we should go with [fol. 114] some bank that had already established branches.
Q. To whom did you communicate that decision, that conclusion?
A. I talked to Mr. Hill about it.
Q. You did?

A. Yes.

Q. Are there any records of what you said?

A. No, it was verbal.

Q. Were the factors that you considered then substantially the same factors which you have outlined in your affidavit about this merger?

A. Yes.

Q. I am a little puzzled by the use of the word, "necessity," Mr. Hackworth. Because, in going over the earnings and growth records, and the strong capital position of the Nashville Bank and Trust Company, it is hard for me, as a layman, to see how a merger could be described as a necessity for that bank.

A. Well, I might have used the wrong word, but it certainly was, if we were going to continue to grow and prosper.

You can't stand still, because if you do, you start going backwards. It was my thought that that was the easiest—not only the easiest, probably the only way we could become a part of the community and get our friends depositing in branch banks—and you simply have to have them.

[fol. 115] Q. Did you communicate these thoughts to Mr. Weaver, when he commenced negotiations for the purchase of the Hill stock?

A. No.

Q. Why did you not do that?

A. I furnished him the information he wanted. I have it here, it's marked, "4-D." It's written out, and I furnished him all the information.

I did tell Mr. Weaver that the lack of branch banks was our weakness.

Q. But you didn't tell him you thought it would be essential, or necessary for the bank to merge?

A. No.

Q. Did you gather, from Mr. Weaver, in his negotiations, that he was of the opinion that a merger of Nashville Bank and Trust Company was necessary?

A. I don't think that at the time Mr. Weaver bought the bank that he had any idea of merging at that time.

Q. And you didn't feel called upon to communicate to him your opinions in this connection?

A. No, because I had already told him that that was

our weakness; if he knew the weakness—after all, I was selling some stock to him too.

Q. Did you feel that you were selling Mr. Weaver a failing bank?

[fol. 116] A. No.

Q. A bank which did not have a good prospect for the future?

A. No.

Q. So that it is not your opinion, is it, or is it, that the Nashville Bank and Trust Company was in danger of failing?

A. Indeed not.

Q. Or of closing it's doors?

A. Indeed not. My concern was that I was growing older and I couldn't see any reason why we could continue growing on the setup we had. And that is my firm conviction today.

* * * * * * *

Examination.

By Mr. Hunt:

Q. Mr. Hackworth, what is the attitude of the employees of the former Nashville Bank and Trust Company, towards the merger?

A. They are absolutely happy over it, and they are working better. And, in addition to that, I would like to add, that Mr. Weaver and Mr. Fleming have done every-[fol. 117] thing they promised to do. They analyzed each job in our bank, and those that were comparable to the ones at the 3rd National, they raised the salaries to approximately the same level.

Q. Were these salaries previously below the level of the salaries of 3rd for comparable work?

A. Generally, with respect to the officials.

Mr. Hunt: I think that is all.

The Witness: I would also like to add to that, that all of the stockholders are very well pleased—and, apparently, the public is.

* * * * * * *

Subscribed and sworn to before me this 23rd day of October, 1964.

Ray L. Walker, Notary Public at Large in and for the State of Tennessee.

My Commission Expires May 6, 1967.

*   *   *   *   *   *   *

In United States District Court

Plaintiff's Exhibit No. 687

Comparison of Net Loan Charge-Offs as Percent of Total Loans

	Third National Bank	Nashville Bank & Trust
1960		
Net loan charge-offs	$ 129,400	
Total loans	135,200,000	
Net loan charge-offs as % of total loans	0.095%	0.09%
1961		
Net loan charge-offs	314,800	
Total loans	132,200,000	
Net loan charge-offs as % of total loans	0.24%	0.3%
1962		
Net loan charge-offs	334,800	
Total loans	141,900,000	
Net loan charge-offs as % of total loans	0.24%	0.4%
1963		
Net loan charge-offs	376,700	
Total loans	163,400,000	
Net loan charge-offs as % of total loans	0.23%	0.2%

Sources: Third National Bank

Total loans: TNB Examination Report for given year—(GX 680, 681, 682, 683)
Net loan charge-offs: 1964 TNB Exam. Report (GX 685)
Nashville Bank & Trust Co.
Net loan charge-offs as % of total loans: Testimony of E. H. Short (Transcript pp. 3076-3077)

In United States District Court

Plaintiff's Exhibit No. 1001

#15a

Page 1 of 2 pages

U.S. v. Third National Bank in Nashville: Total Assets of Commercial Banks in Davidson County, Tennessee, Semi-Annually, 1955-1965 and October 1, 1964
(Unit=$1,000)

	1955		1956		1957		1958		1959		1960	
Name of Bank	June	Dec.	June	Dec.	June	Dec.	June	Dec.	June	Dec.	June	Dec.
Third National	$173,890	$190,567	$191,061	$201,064	$193,685	$211,588	$220,270	$230,334	$230,131	$239,955	$238,792	$252,728
Nashville Bank & Trust	24,113	24,849	28,844	31,229	30,205	32,657	33,806	36,963	37,044	41,124	42,272	43,673
First American National	227,052	239,979	232,837	255,993	243,027	264,871	264,198	291,311	271,732	298,915	283,866	306,293
Commerce Union	116,761	122,543	127,812	129,702	130,972	136,643	143,008	148,612	153,935	157,670	153,500	155.123
Capital City	—	—	—	—	—	—	—	—	—	—	3,673	5,357
All other—Total	6,492	6,753	6,839	7,001	7,265	7,605	7,836	8,107	8,614	8,622	8,831	8,858
Bank of Goodlettsville	2,950	3,160	3,121	3,305	3,376	3,610	3,694	3,891	4,096	4,231	4,200	4,297
Citizens Savings	2,275	2,249	2,324	2,329	2,414	2,494	2,538	2,487	2,634	2,568	2,770	2,758
White's Creek Bank	1,267	1,344	1,394	1,376	1,484	1,501	1,604	1,729	1,884	1,823	1,861	1,803
Grand Total	$548,308	$584,691	$587,393	$624,989	$605,154	$653,364	$669,118	$715,327	$701,456	$746,286	$730,934	$772,032

#15b

Page 2 of 2 pages

U.S. v. Third National Bank in Nashville: Total Assets of Commercial Banks in Davidson County, Tennessee, Semi-Annually, 1955-1965, and October 1, 1964
(Unit=$1,000)

	1961		1962		1963		1964			1965	
Name of Bank	June	Dec.	June	Dec.	June	Dec.	June	Oct.	Dec.	June	
Third National	$267,987	$283,918	$291,157	$305,976	$339,917	$ 339,507	$ 357,111	$ 415,968	$ 424,345	$ 426,710	$
Nashville Bank & Trust	47,025	48,872	49,035	46,922	52,583	47,332	50,863	Merged [a]	Merged [a]	Merged [a]	
First American National	300,225	337,309	332,216	347,689	367,141	392,925	407,248	410,038	445,888	431,829	
Commerce Union	155,883	165,524	193,131	199,908	202,861	209,505	225,534	224,562	233,548	244,317	
Capital City	5,370	5,949	6,152	6,704	7,180	7,489	9,073	9,947	8,968	10,878	
All other—Total	9,021	9,617	9,912	10,543	11,304	12,066	13,006	13,302	13,692	14,596	
Bank of Goodlettsville	4,326	4,753	4,865	5,379	5,790	6,195	6,776	6,887	7,147	7,704	
Citizens Savings	2,835	2,907	3,069	3,043	3,143	3,314	3,435	3,447	3,592	3,654	
White's Creek Bank	1,860	1,957	1,978	2,121	2,371	2,557	2,795	2,868	2,953	3,238	
Grand Total	$785,511	$851,189	$881,603	$917,742	$980,986	$1,008,824	$1,062,835	$1,073,817	$1,126,441	$1,128,330	

[a] Merged into Third National Bank 8/18/64

Source: Reports of Condition

In United States District Court

Plaintiff's Exhibit No. 1002

#16a

U.S. v. Third National Bank in Nashville: Total Loans and Discounts of Commercial Banks in Davidson County, Tennessee, Semi-Annually, 1955-1965
(Unit = $1,000)

Name of Bank	1955 June	1955 Dec.	1956 June	1956 Dec.	1957 June	1957 Dec.	1958 June	1958 Dec.	1959 June	1959 Dec.	1960 June	1960 Dec.
Third National	$ 77,079	$ 86,420	$ 92,669	$ 94,978	$ 99,828	$ 99,351	$103,190	$102,252	$114,392	$119,397	$129,901	$130,567
Nashville Bank & Trust	8,096	8,580	9,884	11,707	12,740	13,384	14,079	15,462	16,653	16,978	17,551	18,256
First American National	82,751	97,211	96,377	105,331	101,159	111,782	102,582	107,305	117,156	128,722	137,952	132,193
Commerce Union	56,250	58,057	58,372	57,892	62,569	61,989	66,344	68,593	76,585	76,533	76,462	73,332
Capital City	—	—	—	—	—	—	—	—	—	—	1,653	2,593
All other—Total	3,916	4,042	4,069	3,996	4,405	4,330	4,432	4,700	5,049	5,137	5,314	5,411
Bank of Goodlettsville	1,692	1,781	1,820	1,777	1,753	2,031	2,060	2,269	2,613	2,581	2,715	2,644
Citizens Savings	1,423	1,409	1,403	1,405	1,412	1,415	1,393	1,436	1,409	1,434	1,440	1,522
White's Creek Bank	801	852	846	814	880	884	979	995	1,027	1,152	1,159	1,245
Grand Total	$228,092	$254,310	$261,371	$273,904	$280,341	$290,836	$290,627	$298,312	$329,835	$346,797	$368,833	$362,352

#16b

U.S. v. Third National Bank in Nashville: Total Loans and Discounts of Commercial Banks in Davidson County, Tennessee, Semi-Annually, 1955-1965
(Unit = $1,000)

Name of Bank	1961 June	1961 Dec.	1962 June	1962 Dec.	1963 June	1963 Dec.	1964 June	1964 Oct.	1964 Dec.	1965 June	
Third National	$135,022	$132,249	$147,177	$155,542	$175,578	$175,219	$194,448	$219,711	$224,321	$233,283	$
Nashville Bank and Trust	19,239	19,078	19,606	19,181	21,096	21,424	22,792	Merged [a]	Merged [a]	Merged [a]	
First American National	131,318	138,750	151,825	161,300	159,887	172,081	185,344	195,605	206,213	233,393	
Commerce Union	69,122	66,601	85,452	90,958	99,813	105,098	115,991	117,937	121,283	130,676	
Capital City	2,619	2,421	2,618	2,827	3,300	3,319	3,169	3,962	4,563	4,628	
All other—Total	5,619	5,660	5,924	5,971	6,429	6,913	7,521	7,826	8,119	8,707	
Bank of Goodlettsville	2,850	2,903	3,104	3,143	3,549	3,946	4,318	4,459	4,610	5,140	
Citizens Savings	1,530	1,542	1,614	1,716	1,706	1,740	1,788	1,821	1,825	1,779	
White's Creek Bank	1,239	1,215	1,206	1,112	1,174	1,227	1,415	1,546	1,684	1,788	
Grand Total	$362,939	$364,759	$412,602	$435,779	$466,103	$483,874	$529,715	$545,041	$564,499	$610,687	

[a] Merged into Third National Bank 8/18/64

Source: Reports of Condition

In United States District Court

Plaintiff's Exhibit No. 1003

#17a

U.S. v. Third National Bank in Nashville: Total Deposits* of Commercial Banks in Davidson County, Tennessee, Semi-Annually, 1955-1965
(Unit = $1,000)

	1955		1956		1957		1958		1959		1960	
Name of Bank	June	Dec.	June	Dec.	June	Dec.	June	Dec.	June	Dec.	June	Dec.
Third National	$161,645	$176,137	$175,516	$185,039	$172,422	$194,390	$202,377	$211,545	$210,862	$220,360	$217,400	$229,095
Nashville Bank & Trust	20,796	21,475	25,425	27,731	26,603	28,947	30,096	33,264	33,186	37,210	38,284	39,380
First American National	211,213	223,890	216,696	239,348	216,884	246,763	244,565	268,634	246,938	274,858	257,900	279,501
Commerce Union	107,279	112,716	116,641	118,198	118,067	124,273	129,632	135,395	138,841	142,210	136,668	139,126
Capital City	—	—	—	—	—	—	—	—	—	—	2,196	3,661
All other—Total	5,772	6,001	6,085	6,228	6,484	6,824	6,981	7,302	7,741	7,801	7,929	8,008
Bank of Goodlettsville	2,733	2,930	2,878	3,052	3,091	3,341	3,383	3,603	3,768	3,928	3,856	3,979
Citizens Savings	1,891	1,849	1,935	1,936	2,042	2,115	2,130	2,106	2,231	2,198	2,367	2,384
White's Creek Bank	1,148	1,222	1,272	1,240	1,351	1,368	1,468	1,593	1,742	1,675	1,706	1,645
Grand Total	$506,705	$540,219	$540,363	$576,544	$540,460	$601,197	$613,651	$656,140	$637,568	$682,439	$660,377	$698,771

#17b

U.S. v. Third National Bank in Nashville: Total Deposits* of Commercial Banks in Davidson County, Tennessee, Semi-Annually, 1955-1965
(Unit = $1,000)

	1961		1962		1963		1964			1965	
Name of Bank	June	Dec.	June	Dec.	June	Dec.	June	Oct.	Dec.	June	Dec.
Third National	$244,609	$259,359	$265,290	$278,153	$310,557	$304,100	$315,090	$378,881	$ 375,591	$ 375,063	$
Nashville Bank & Trust	42,633	44,283	44,275	41,889	47,450	42,085	45,471	Merged [a]	Merged [a]	Merged [a]	
First American National	272,922	308,934	303,121	314,243	333,244	357,513	371,108	372,039	408,402	393,040	
Commerce Union	139,477	148,822	172,701	177,756	181,309	185,871	202,624	200,122	209,953	219,514	
Capital City	3,666	4,258	4,439	4,990	5,473	5,763	7,266	8,074	7,091	8,954	
All other—Total	8,174	8,765	9,057	9,523	10,363	11,032	12,025	12,147	12,680	13,590	
Bank of Goodlettsville	3,999	4,425	4,532	4,966	5,410	5,725	6,639	6,418	6,732	7,268	
Citizens Savings	2,473	2,543	2,707	2,596	2,758	2,929	3,053	3,079	3,197	3,301	
White's Creek Bank	1,702	1,797	1,818	1,961	2,195	2,378	2,603	2,650	2,751	3,021	
Grand Total	$711,481	$774,421	$798,883	$826,554	$888,396	$906,364	$953,584	$971,263	$1,013,717	$1,010,161	

* Includes demand, and time and savings deposits, both IPC and governmental, etc.

[a] Merged into Third National Bank 8/18/64.

Source: Reports of Condition

In United States District Court

Plaintiff's Exhibit No. 1004

#18a

U.S. v. Third National Bank in Nashville: Demand Deposits (IPC) Commercial Banks in Davidson County, Tennessee, Semi-Annually, 1955-1965
(Unit = $1,000)

Name of Bank	1955 June	1955 Dec.	1956 June	1956 Dec.	1957 June	1957 Dec.	1958 June	1958 Dec.	1959 June	1959 Dec.	1960 June	1960 Dec.
Third National	$ 62,371	$ 65,794	$ 64,074	$ 74,756	$ 65,949	$ 74,229	$ 70,592	$ 86,147	$ 83,420	$ 86,464	$ 88,086	$ 87,636
Nashville Bank & Trust	10,289	10,132	12,637	14,239	12,803	13,609	14,147	17,123	18,152	18,160	19,981	18,733
First American National	95,568	100,744	95,518	105,767	94,510	101,279	91,140	114,784	112,113	116,109	110,621	115,722
Commerce Union	43,316	51,572	45,591	51,551	44,592	53,014	45,311	56,156	55,070	60,874	53,602	56,059
Capital City	—	—	—	—	—	—	—	—	—	—	1,551	2,214
All other—Total	2,760	2,921	2,857	2,967	2,857	2,947	2,887	3,122	3,348	3,287	3,235	3,230
Bank of Goodlettsville	1,403	1,512	1,402	1,489	1,396	1,493	1,466	1,572	1,621	1,619	1,637	1,659
Citizens Savings	793	778	824	833	762	817	754	816	888	905	923	868
White's Creek Bank	564	631	631	645	699	637	667	734	839	763	765	703
Grand Total	$214,304	$213,163	$220,677	$249,280	$220,711	$245,078	$224,077	$277,332	$272,103	$284,894	$277,116	$283,594

#18b

U.S. v. Third National Bank in Nashville: Demand Deposits (IPC) Commercial Banks in Davidson County, Tennessee, Semi-Annually, 1955-1965
(Unit = $1,000)

Name of Bank	1961 June	1961 Dec.	1962 June	1962 Dec.	1963 June	1963 Dec.	1964 June	1964 Oct.	1964 Dec.	1965 June	1965 Dec.
Third National	$ 84,852	$ 98,982	$ 90,472	$100,949	$102,288	$112,493	$103,802	$127,790	$137,536	$132,777	$
Nashville Bank & Trust	18,078	19,717	17,638	17,586	19,135	18,612	18,951	Merged [a]	Merged [a]	Merged [a]	
First American National	110,345	125,215	113,279	122,080	118,522	138,653	125,345	135,050	149,505	138,856	
Commerce Union	52,218	61,215	61,220	70,476	63,941	70,694	69,451	71,212	76,451	70,780	
Capital City	1,921	1,799	1,692	2,014	1,821	1,986	1,982	2,256	2,525	2,633	
All other—Total	3,203	3,613	3,439	3,760	3,932	4,205	4,495	4,492	4,733	4,947	
Bank of Goodlettsville	1,586	1,778	1,582	1,858	1,935	2,101	2,264	2,236	2,362	2,535	
Citizens Savings	872	1,008	1,059	1,008	1,076	1,112	1,140	1,174	1,276	1,281	
White's Creek Bank	745	827	798	894	921	992	1,091	1,082	1,095	1,131	
Grand Total	$270,617	$310,541	$287,740	$316,865	$309,639	$346,643	$324,026	$340,800	$370,750	$349,993	

[a] Merged into Third National Bank 8/18/64.

Source: Reports of Condition

In United States District Court

Plaintiff's Exhibit No. 1006

U.S. v. Third National Bank in Nashville, Tenn.: Total Current Operating Revenues and Trust Department Revenues of Commercial Banks* in Davidson County, Tennessee, for Years Ending December 31st, 1955-1964
(Unit = $1,000)

Name of Bnak	Revenue	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964
Third National	Total	6,221	7,281	7,909	8,398	9,462	10,361	10,605	12,713	14,312	17,058
	Trust	197	140	146	185	228	241	264	296	331	508
Nashville Bank & Trust Co.	Total	1,219	1,390	1,500	1,770	1,968	2,164	2,025	2,155	2,348	1,571 [3]
	Trust	152	178	189	221	218	246	239	256	265	199
First American National	Total	6,864	7,686	8,622	9,097	10,207	11,232	11,892	13,447	15,149	17,356
	Trust	237	277	315	335	319	329	370	412	506	556
Commerce Union	Total	[1]	5,575	6,186	6,272	7,474	7,633	7,274	9,146	10,175	11,123
	Trust		66	123	96	111	131	144	167	192	261
Citizens Savings	Total	119	110	113	123	114	131	137	152	165	162
	Trust	—	—	—	—	—	—	[4]	[4]	1	[4]
The White's Creek Bank	Total	59	62	76	79	93	104	99	100	131	161
	Trust	[4]	[4]	0		1	[4]	5	[4]		1
Grand Total	Total	[2]	22,104	24,506	25,739	29,318	31,625	32,133	37,713	42,280	47,611
	Trust		661	773	837	877	947	1,022	1,131	1,295	1,525

[1] Commerce Union Bank Calendar Year 1955 missing.
[2] 1955 totals omitted due to lack of information.
[3] Based on Earnings of NB&T through 8–17–64.
[4] Less than $500.00.

Total = Total Current Operating Revenue. Trust = Trust Department Revenues. * = Banks that have Trust Departments.

Source: Reports of Earnings and Dividends or Income and Dividends of Respective Banks.

In United States District Court

Plaintiff's Exhibit No. 1007

U.S. v. Third National Bank in Nashville, Tenn.: Total Current Operating Revenues; and Net Incomes, Before and After Taxes, of Commercial Banks in Davidson County, Years Ending December 31st, 1955-1964
(Unit = $1,000)

Name of Bank		1955	1956	1957	1958	1959	1960	1961	1962	1963	1964
Third National Bank, Nashville........	Rev.	6,221	7,281	7,909	8,398	9,462	10,361	10,605	12,713	14,312	17,058
	Inc. bef.	1,153	1,695	2,041	2,832	2,037	4,153	3,722	3,620	4,089	4,201
	Inc. aft.	898	967	1,025	1,119	1,700	1,961	1,933	2,003	2,446	2,722
Nashville Bank & Trust Co............	Rev.	1,219	1,390	1,600	1,770	1,968	2,164	2,026	2,155	2,348	1,571[3]
	Inc. bef.	216	237	292	176	311	640	699	642	567	554
	Inc. aft.	99	130	158	107	184	350	371	380	368	341
First American National Bank.........	Rev.	6,864	7,686	8,622	9,097	10,207	11,232	11,892	13,447	15,149	17,536
	Inc. bef.	1,695	1,646	2,414	4,094	1,710	3,161	4,330	3,948	4,796	4,950
	Inc. aft.	1,001	1,985	1,455	2,601	1,307	1,870	2,545	2,420	2,765	2,977
Commerce Union Bank...............	Rev.	[1]	5,575	6,186	6,272	7,474	7,633	7,374	9,146	10,175	11,123
	Inc. bef.		1,068	1,441	1,324	2,039	2,112	2,101	1,862	2,068	1,623
	Inc. aft.		531	664	616	1,390	1,141	1,194	1,241	1,035	844
Capital City Bank of Nashville........	Rev.	—	—	—	—	—	166	260	310	370	470
	Inc. bef.	—	—	—	—	—	23	32	50	24	98
	Inc. aft.	—	—	—	—	—	14	25	36	16	68
Bank of Goodlettsville................	Rev.	124	136	149	161	190	215	219	152	326	376
	Inc. bef.	49	51	49	49	51	61	61	57	79	94
	Inc. aft.	34	32	28	31	29	33	29	27	55	48
Citizens Savings Bank................	Rev.	119	119	113	123	114	131	137	153	165	162
	Inc. bef.	30	17	5	17	22	19	20	28	27	25
	Inc. aft.	21	7	—	15	16	12	(-6)	115	14	9
White's Creek Bank & Trust Co........	Rev.	59	62	76	79	93	104	99	100	131	161
	Inc. bef.	11	14	15	12	16	26	15	9	13	26
	Inc. aft.	7	10	11	7	12	21	7	4	11	26
Grand Total.................	Rev.	[2]	22,240	24,655	25,900	29,508	32,006	32,612	38,612	42,976	48,457
	Inc. bef.		4,728	6,257	8,504	6,186	10,295	10,980	10,216	11,663	11,571
	Inc. aft.		2,582	3,341	4,496	4,638	5,402	6,098	6,126	6,710	7,055

Abbreviations: Rev. = Total Current Operating Revenue; Inc. bef. = Net Income Before Taxes; Inc. aft. = Net Income After Taxes.

[1] Commerce Union Bank: Calendar Year 1955 Missing.
[2] 1955 Totals Omitted due to lack of information.
[3] Based on Earnings of NB&T through 8-17-64.

Source: Report of Earnings and Dividends, or Reports of Income and Dividends, of Respective Banks.

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT NO. 1008

*1

United States v. Third National Bank in Nashville; Growth of Total Assets, Loans and Deposits, of Commercial Banks in Davidson County, Tennessee, from June 1955 to June 1964

Name of Bank	Assets 1955 $ 1,000	Assets 1964 $ 1,000	Percent of Increase	Loans 1955 $ 1,000	Loans 1964 $ 1,000	Percent of Increase	Deposits 1955 $ 1,000	Deposits 1964 $ 1,000	Percent of Increase
Third National	173,890	357,111	105.4	77,079	194,448	152.3	161,645	315,090	94.9
Nashville Bank and Trust	24,113	50,863	110.9	8,096	22,792	181.5	20,796	45,471	118.7
First American National	227,052	407,248	79.4	82,751	185,344	124.0	211,213	371,108	75.7
Commerce Union	116,761	225,534	93.2	56,250	155,991	177.3	107,279	202,624	88.9
Capital City	—	9,073*	—	—	3,619*	—	—	7,266*	—
All Other Banks	6,492	13,006	100.3	3,916	7,521	92.1	5,772	12,025	108.3
Grand Total	548,308	1,053,762	92.2	228,092	566,096	148.2	506,705	946,318	86.8

* Not included in Grand Total

Source: Reports of Condition of Respective Banks.

In United States District Court

Plaintiff's Exhibit No. 1009

#2

United States v. Third National Bank in Nashville: Growth of Total Current Operating Revenue, Earnings on Loans, and Trust Department Revenues of Commercial Banks in Davidson County, Tennessee from 1955 to 1963

Name of Bank	Total Current Operating Revenue 1955 $1,000	Total Current Operating Revenue 1963 $ 1,000	Total Current Operating Revenue Percent Increase	Earnings on Loans 1955 $1,000	Earnings on Loans 1963 $ 1,000	Earnings on Loans Percent Increase	Trust Department Revenue 1955 $1,000	Trust Department Revenue 1963 $1,000	Trust Department Revenue Percent Increase
Third National Bank in Nashville	6,221	14,312	130.1	4,508	10,607	135.3	197	331	68.0
Nashville Bank & Trust Co.	1,219	2,348	92.6	394	1,225	210.9	152	265	74.3
First American National Bank	6,864	15,149	120.7	4,130	9,646	133.6	237	506	113.5
Commerce Union Bank	[1]	10,175 [3]	—	[1]	7,032 [3]	—	[1]	192 [3]	—
Capital City Bank of Nashville [2]	—	370 [3]	—	—	222 [3]	—	— [4]	— [4]	—
All other Banks	302	622	106.0	251	487	94.0	*	1	—
Grand Total	14,606	32,431	122.0	9,283	21,965	136.6	586	1,103	88.2

[1] Commerce Union Bank: Calendar Year 1955 missing.
[2] Capital City Bank originated in 1960.
[3] Not included in Grand Total.
[4] None.
* Less than $500.00.

Source: Reports of Earnings and Dividends, 1955, and Reports of Income and Dividends, 1963, of Respective Banks.

In United States District Court

Plaintiff's Exhibit No. 1010

#3

United States v. Third National Bank in Nashville: Growth of Total Current Operating Revenue and Net Income of Commercial Banks in Davidson County, Tennessee from 1955 to 1963

Name of Bank	Total Current Operating Revenue 1955 $1,000	1963 $1,000	Percent Increase	Net Income Before Taxes 1955 $1,000	1963 $1,000	Percent Increase	Net Income After Taxes 1955 $1,000	1964 $1,000	Percent Increase
Third National Bank in Nashville	6,221	14,312	130.1	1,153	4,089	254.6	898	2,446	172.4
Nashville Bank & Trust Co.	1,219	2,348	92.6	216	567	162.5	99	368	271.7
First American National Bank	6,864	15,149	120.7	1,695	4,796	182.9	1,001	2,765	176.2
Commerce Union Bank	[1]	10,175 [3]	—	[1]	2,068 [3]	—	[1]	1,035 [3]	—
Capital City Bank of Nashville [2]	—	370 [3]	—	—	24 [3]	—	—	16 [3]	—
All Other Banks	302	622	106.0	90	119	32.2	62	80	29.0
Grand Total	14,606	32,431	122.0	3,154	9,571	203.5	2,060	5,659	174.7

[1] Commerce Union Bank: data for calendar year 1955 missing.
[2] Capital City Bank originated in 1960.
[3] Not included in Grand Total.

Source: Reports of Earnings and Dividends, 1955, and Reports of Income and Dividends, 1963, of Respective Banks.

In United States District Court

Plaintiff's Exhibit No. 1012

#3a

United States v. Third National Bank in Nashville: Certain Ratios of Four Largest Commercial Banks in Davidson County, Tennessee, Compared with Averages for Other Groups of Commercial Banks in 1962

Name of Bank	Net Current Earnings to Capital Accounts	Net Income after Taxes to Capital Accounts	Total Loans to Total Assets	Trust Department Revenue as Percent of Total Operating Revenue
Nashville Bank & Trust Co.	16.8	9.4	40.9	11.9
Third National Bank	24.8	10.5	49.6	2.3
First American National	20.9	11.3	44.1	3.1
Commerce Union	13.5	9.3	43.7	1.8
6th Fed. Res. District:				
All Member Banks	14.5	8.6	40.2	2.8 [a]
Fed. Res. Banks in Tennessee:				
Over $50 Million Deposits	17.8	9.6	41.8	3.4 [a]
$10-$50 Million Deposits	16.3	10.7	44.3	1.2 [a]

[a] Banks with none were excluded by the Federal Reserve Bank in computing the average.

Sources: 1. Submittals by banks to Antitrust Division; 2. Federal Reserve Bank of Atlanta.

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT NO. 1013

United States v. Third National Bank in Nashville: Total Assets of Commercial Banks in Davidson County, Tennessee in December 1963, and June and October 1964

Name of Bank	Dec. 20, 1963 Amount $1,000	Dec. 20, 1963 Percent of Total	June 30, 1964 Amount $1,000	June 30, 1964 Percent of Total	Oct. 1, 1964 Amount $1,000	Oct. 1, 1964 Percent of Total
Third National	339,507	33.7	357,111	33.6	415,968	38.7
Nashville Bank & Trust	47,332	4.7	50,863	4.8	a	a
First American National	392,925	38.9	407,248	38.3	410,038	38.2
Commerce Union	209,505	20.8	225,534	21.2	224,562	20.9
Capital City	7,489	0.7	9,073	0.9	9,947	0.9
Bank of Goodlettsville	6,195	0.6	6,776	0.6	6,887	0.6
Citizens Savings	3,314	0.3	3,435	0.3	3,447	0.3
White's Creek	2,557	0.3	2,795	0.3	2,868	0.3
Total	1,008,824	100.0	1,062,835	100.0	1,073,817	100.0

[a] Merged into Third National Bank on August 18, 1964.

Note: Individual percentages may not equal 100 percent due to rounding.

Source: Reports of Condition of Respective Banks.

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 1014

United States v. Third National Bank in Nashville: Total Deposits of Commercial Banks in Davidson County, Tennessee in December 1963, and June and October 1964

Name of Bank	Dec. 20, 1963 Amount $1,000	Dec. 20, 1963 Percent of Total	June 30, 1964 Amount $1,000	June 30, 1964 Percent of Total	Oct. 1, 1964 Amount $1,000	Oct. 1, 1964 Percent of Total
Third National	304,100	33.6	315,090	33.0	378,881	39.0
Nashville Bank & Trust	42,085	4.6	45,471	4.8	[a]	[a]
First American National	357,513	39.4	371,108	38.9	372,039	38.3
Commerce Union	185,871	20.5	202,624	21.2	200,122	20.6
Capital City	5,763	0.6	7,266	0.8	8,074	0.8
Bank of Goodlettsville	5,725	0.6	6,369	0.7	6,418	0.7
Citizens Savings	2,929	0.3	3,053	0.3	3,079	0.3
White's Creek	2,378	0.3	2,603	0.3	2,650	0.3
Total	906,364	100.0	953,584	100.0	971,263	100.0

[a] Merged into Third National Bank on August 18, 1964.

Note: Individual percentages may not equal 100 percent due to rounding.

Source: Reports of Condition of Respective Banks.

In United States District Court

Plaintiff's Exhibit No. 1015

United States v. Third National Bank in Nashville: Total Loans of Commercial Banks in Davidson County, Tennessee in December 1963, and June and October 1964

Name of Bank	Dec. 20, 1963		June 30, 1964		Oct. 1, 1964	
	Amount $1,000	Percent of Total	Amount $1,000	Percent of Total	Amount $1,000	Percent of Total
Third National Bank of Nashville	175,219	30.2	194,448	30.7	219,711	40.3
Nashville Bank & Trust Co.	21,424	4.4	22,792	4.3	[a]	[a]
First American National	172,081	35.6	185,344	35.0	195,605	35.9
Commerce Union	105,098	21.7	115,991	21.9	117,937	21.6
Capital City	3,139	0.6	3,619	0.7	3,962	0.7
Bank of Goodlettsville	3,946	0.8	4,318	0.8	4,459	0.8
Citizens Savings	1,740	0.4	1,788	0.3	1,821	0.3
White's Creek	1,227	0.3	1,415	0.3	1,546	0.3
Total	483,874	100.0	529,715	100.0	545,041	100.0

[a] Merged into Third National Bank on August 18, 1964.

Note: Individual percentages may not equal 100 percent due to rounding.

Source: Reports of Condition of Respective Banks.

In United States District Court

Plaintiff's Exhibit No. 1016

United States v. National Bank in Nashville: Total Current Operating Revenues of Commercial Banks in Davidson County, Tennessee for the Years 1963, 1964 and 1965

Name of Bank	1963 Amount $1,000	1963 Percent of Total	1964 Amount $1,000	1964 Percent of Total	1965 Amount $1,000	1965 Percent of Total
Third National	14,312	33.3	17,058	35.2	20,613 [c]	38.0
Nashville Bank & Trust	2,348	5.5	1,501 [a]	3.2 [a]	[b]	[b]
First American National	15,149	35.2	17,536	36.2	19,773 [c]	36.4
Commerce Union	10,175	23.7	11,123	23.0	12,153 [c]	23.1
Capital City	370	0.9	470	1.0	586	1.1
Bank of Goodlettsville	326	0.7	376	0.8	458	0.8
Citizens Savings	165	0.4	162	0.3	165	0.3
White's Creek	131	0.3	161	0.3	184	0.3
Total	42,976	100.0	48,457	100.0	54,292	100.0

[a] Through August 18, 1964.
[b] Merged into Third National August 18, 1964.
[c] Moody's Banks & Finance News 1965, Pages 1123, 1212, and 1068.

Source: Report of Income and Dividends of the Respective Banks.

IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT NO. 1018

United States v. Third National Bank in Nashville: Single Legal Loan Limits [a] of Commercial Banks in Davidson County, Tennessee in December 1963, and June and October 1964

Name of Bank	December 20, 1963 Loan Amount	December 20, 1963 Limit % All Banks	June 30, 1964 Loan Amount	June 30, 1964 Limit % All Banks	October 1, 1964 Loan Amount	October 1, 1964 Limit % All Banks
Third National	$2,000,000	21.1	$ 2,304,588	22.1	$2,758,889	28.0
Nashville Bank & Trust	1,090,461	11.5	1,125,078	10.8	[b]	—
Sub total	$3,090,461	32.6	$ 3,429,666	32.9	—	—
All other banks	6,395,971	67.4	7,016,035	67.1	7,076,827	72.0
Grand Total	$9,486,423	100.0	$10,445,701	100.0	$9,835,716	100.0

[a] Based on 10% of the respective loan bases of the National banks and 25% for the respective loan bases of the State banks.
[b] Merged into Third National on August 18, 1964.

Source: Reports of Condition of Respective Banks.

In United States District Court

Plaintiff's Exhibit No. 1019

United States v. Third National Bank in Nashville: Banks in Tennessee with Deposits of $25,000,000 and Over by Class, Size and Rank in December, 1963

Deposits in Millions	Name of Bank	City	Total Deposits $1,000	Total Assets $1,000
Over $50	Union Planters National Bank of Memphis......	Memphis	$477,627	$539,182
	First National Bank......	Memphis	$436,032	491,325
	First American National Bank.................	Nashville	$353,891	395,678
	Third National Bank in Nashville.............	Nashville	309,667	342,089
	Commerce Union Bank....	Nashville	188,318	212,727
	The Hamilton National Bank of Chattanooga, Tennessee	Chattanooga	187,204	205,939
	Hamilton National Bank..	Knoxville	162,063	172,919
	National Bank of Commerce in Memphis.....	Memphis	137,096	155,640
	American National Bank and Trust Co..........	Chattanooga	136,061	151,852
	Park National Bank of Knoxville.................	Knoxville	105,903	117,253
	The First National Bank of Sullivan County.......	Kingsport	64,107	70,207
$25-$50	Nashville Bank & Trust Co.	Nashville	45,458	51,931
	Pioneer Bank............	Chattanooga	42,261	52,161
	The Hamilton National Bank	Johnson City	31,733	34,586
	The Tennessee Valley Bank	Knoxville	31,656	35,464

Source: Polk's Bank Directory—March 1964.

In United States District Court

Plaintiff's Exhibit No. 1020

Table 2-A. Number of Accounts by Size of Account

All Insured Commercial Banks in State, November 18, 1964

Tennessee		Number of Accounts					Percent of Totals Accounts			
Banks by Size of Their Total Deposits in State (in thousands)	Number of Banks	Total	$ 10,000 or Less	$10,000 to $25,000	$25,000 to $100,000	More than $100,000	$10,000 or Less	$10,000 to $25,000	$25,000 to $100,000	More than $100,000
Total				Total Deposits						
Total	290	2,701,914	2,639,505	44,191	13,634	4,584	97.7	1.6	.5	.2
Less than $250	1	107	102	5	0	0	95.3	4.7	.0	.0
$250 to $500	1	737	734	3	0	0	99.6	.4	.0	.0
$500 to $1,000	18	17,455	17,315	114	26	0	99.2	.7	.1	.0
$1,000 to $2,000	49	74,255	73,279	827	132	17	98.7	1.1	.2	.0
$2,000 to $5,000	88	394,555	390,350	3,426	680	99	98.9	.9	.2	.0
$5,000 to $10,000	70	403,021	394,999	6,351	1,447	224	98.0	1.6	.4	.1
$10,000 to $25,000	45	507,444	496,048	8,864	2,094	438	97.8	1.7	.4	.1
$25,000 to $50,000	7	142,845	139,584	2,354	699	208	97.7	1.6	.5	.1
$50,000 to $100,000	1	36,919	36,076	553	225	65	97.7	1.5	.6	.2
$100,000 to $250,000	6	506,317	493,534	8,645	3,047	1,091	97.5	1.7	.6	.2
$250,000 to $500,000	2	261,615	252,253	6,041	2,318	1,003	96.4	2.3	.9	.4
$500,000 to $1,000,000	2	356,644	345,321	7,008	2,966	1,439	96.8	2.0	.8	.4

Table 2-B. Amount of Deposits by Size of Account

All Insured Commercial Banks in State, November 18, 1964

Tennessee		Deposits (in thousands) in Accounts of—					Percent of Total Deposits in Accounts of—			
Banks by Size of Their Total Deposits in State (in thousands)	Number of Banks	Total	$10,000 or Less	$10,000 to $25,000	$25,000 to $100,000	More than $100,000	$10,000 or Less	$10,000 to $25,000	$25,000 to $100,000	More than $100,000
Total		Total Deposits								
Total	290	4,700,018	1,795,855	626,148	640,068	1,637,947	38.2	13.3	13.6	34.8
Less than $250	1	145	61	84	0	0	42.1	57.9	.0	.0
$250 to $500	1	467	435	32	0	0	93.1	6.9	.0	.0
$500 to $1,000	18	14,420	11,657	1,577	1,186	0	80.8	10.9	8.2	.0
$1,000 to $2,000	49	74,177	53,815	11,589	5,969	2,804	72.5	15.6	8.0	3.8
$2,000 to $5,000	88	291,935	196,387	47,379	30,488	17,681	76.3	16.2	10.4	6.1
$5,000 to $10,000	70	498,700	297,717	87,548	65,817	47,618	59.7	17.6	13.2	6.5
$10,000 to $25,000	45	696,334	371,101	124,842	96,646	103,745	53.3	17.9	13.9	14.9
$25,000 to $50,000	7	227,372	100,151	32,817	33,646	60,758	44.0	14.4	14.8	26.7
$50,000 to $100,000	1	65,923	23,800	7,731	10,401	23,991	36.1	11.7	15.8	36.4
$100,000 to $250,000	6	950,822	317,783	122,737	143,630	366,677	33.4	12.9	15.1	38.6
$250,000 to $500,000	2	807,834	186,314	87,304	110,748	423,468	23.1	10.8	13.7	52.4
$500,000 to $1,000,000	2	1,071,885	236,633	102,512	141,537	591,203	22.1	9.6	13.2	55.2

In United States District Court

Plaintiff's Exhibit No. 1023

United States v. Third National Bank in Nashville: Annual Salaries of Officers and of Employees of Commercial Banks in Davidson County, Tennessee for 1962

Name of Bank	Officers			Employees		
	Number [a]	Salaries	Average Salary per Officer	Number [a]	Salaries	Average Salary per Employee
Third National	75	$1,001,667.80	$13,355.57	492	$1,711,646.93	$3,478.96
Nashville Bank & Trust	21	201,238.33	9,582.78	114	302,666.62	2,654.97
First American National	66	757,296.37	11,474.19	588	2,167,808.19	3,686.75
Commerce Union	95	799,836.42	8,419.33	415	1,403,699.51	3,382.41
Capital City	6	49,560.92	8,260.15	13	33,455.13	2,573.47
Bank of Goodlettsville	7	35,200.00	5,028.57	7	18,866.00	2,695.14
Citizens Savings	4	15,900.00	3,975.00	8.5	23,201.45	2,729.58
White's Creek	4	21,000.00	5,250.00	4	11,908.27	2,977.07
Total	278	$2,881,699.84	$10,365.83	1,641.5	$5,673,252.10	$3,456.14

[a] Number on payroll at end of period.

Source: Reports of Income and Dividends—Calendar Year 1962.

In United States District Court

Plaintiff's Exhibit No. 1024

United States v. Third National Bank in Nashville: Total Assets, Loans and Deposits of Commercial Banks in Davidson County, Tennessee, in December 1965

Name of Bank	Assets		Loans		Deposits	
	Amount $1,000	Percent of Total	Amount $1,000	Percent of Total	Amount $1,000	Percent of Total
Third National	447,829	37.6	252,655	38.3	396,999	37.1
First American National	461,969	38.7	249,000	37.8	420,528	39.3
Commerce Union	257,096	21.6	143,725	21.8	229,883	21.5
Capital City	9,914	.8	4,732	.7	7,938	.7
Bank of Goodlettsville	8,280	.7	5,653	.9	7,814	.7
Citizens Savings	3,841	.3	1,829	.3	3,496	.3
White's Creek	3,274	.3	1,969	.3	3,046	.3
Total	1,192,203	100.0	659,563	100.0	1,069,704	100.0

Note: Individual percentages may not equal 100 per cent due to rounding.

Source: Reports of Condition of Respective Banks.

In United States District Court

Plaintiff's Exhibit No. 1025

United States v. Third National Bank in Nashville: Total Current Operating Revenues, Revenues from Loans, and Trust Department Revenues of Commercial Banks in Davidson County, Tennessee for the Year Ended December 31, 1965

Name of Bank	Total Revenues Amount $1,000	Total Revenues Percent of Total	Revenues from Loans Amount $1,000	Revenues from Loans Percent of Total	Trust Dept. Revenues Amount $1,000	Trust Dept. Revenues Percent of Total
Third National Bank	19,973	37.2	14,753	38.6	800	46.2
First American National	19,760	36.8	13,587	35.5	637	36.8
Commerce Union	12,513	23.3	8,935	23.4	295	17.0
Capital City	586	1.1	353	0.9	—	
Bank of Goodlettsville	458	.9	388	1.0	—	
Citizens Savings	165	.3	117	.3	*	*
White's Creek	184	.3	128	.3	1	—
Total	53,639	100.0	38,261	100.0	1,733	100.0

* Less than $500.00.

Note: Individual percentages may not equal 100 percent due to rounding.

Source: Reports of Income and Dividends of the respective banks.

In United States District Court

Plaintiff's Exhibit No. 1026

United States v. Third National Bank in Nashville: Certain Monthly Charges for Personal Checking Account Services of the Four Largest Commercial Banks in Davidson County, Tennessee as of December 31, 1963

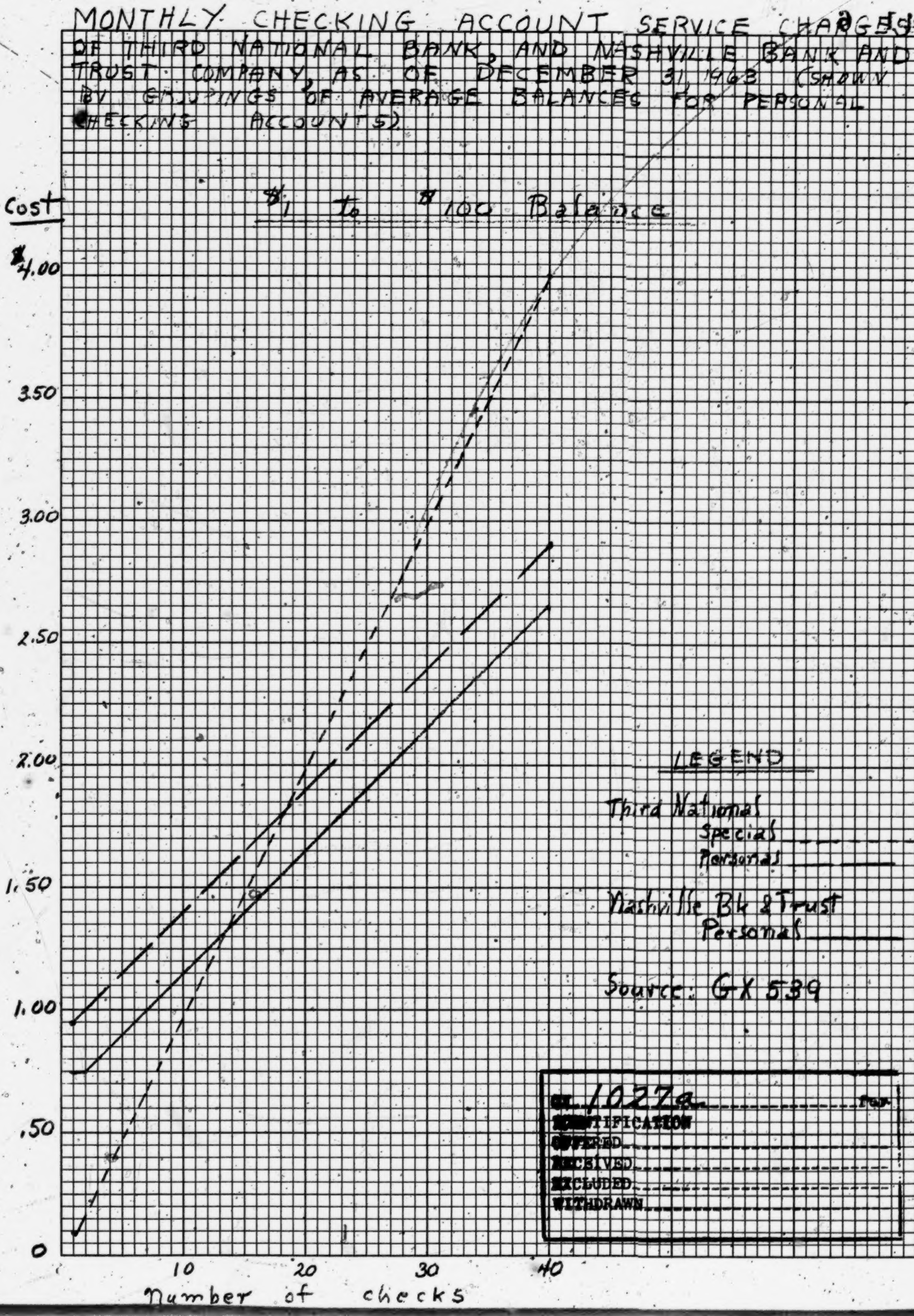
Average Monthly Balance	Number of Checks	Service Charges: Third National Bank	First American National Bank	Commerce Union Bank	Nashville* Bank and Trust Company
$1	10	$1.40	$1.35	$1.35	$1.15
	20	1.90	1.95	1.95	1.65
to	30	2.40	2.55	2.55	2.15
$100	40	2.90	3.15	3.15	2.65
$100	10	1.15	1.10	1.15	.75
	20	1.65	1.70	1.75	1.25
to	30	2.15	2.30	2.35	1.75
$200	40	2.65	2.90	2.95	2.25
$200	10	.90	.85	.85	.00
	20	1.40	1.45	1.45	.50
to	30	1.90	2.05	2.05	1.00
$300	40	2.40	2.65	2.65	1.50
$300	10	.65	.60	.85	.00
	20	1.15	1.20	1.45	.25
to	30	1.65	1.80	2.05	.75
$400	40	2.15	2.40	2.65	1.25
$400	10	.40	.30	.00	.00
	20	.90	.90	.70	.00
to	30	1.40	1.50	1.30	.50
$500	40	1.90	2.10	1.90	1.00

Sources: GX 539 and schedules submitted by the other banks.

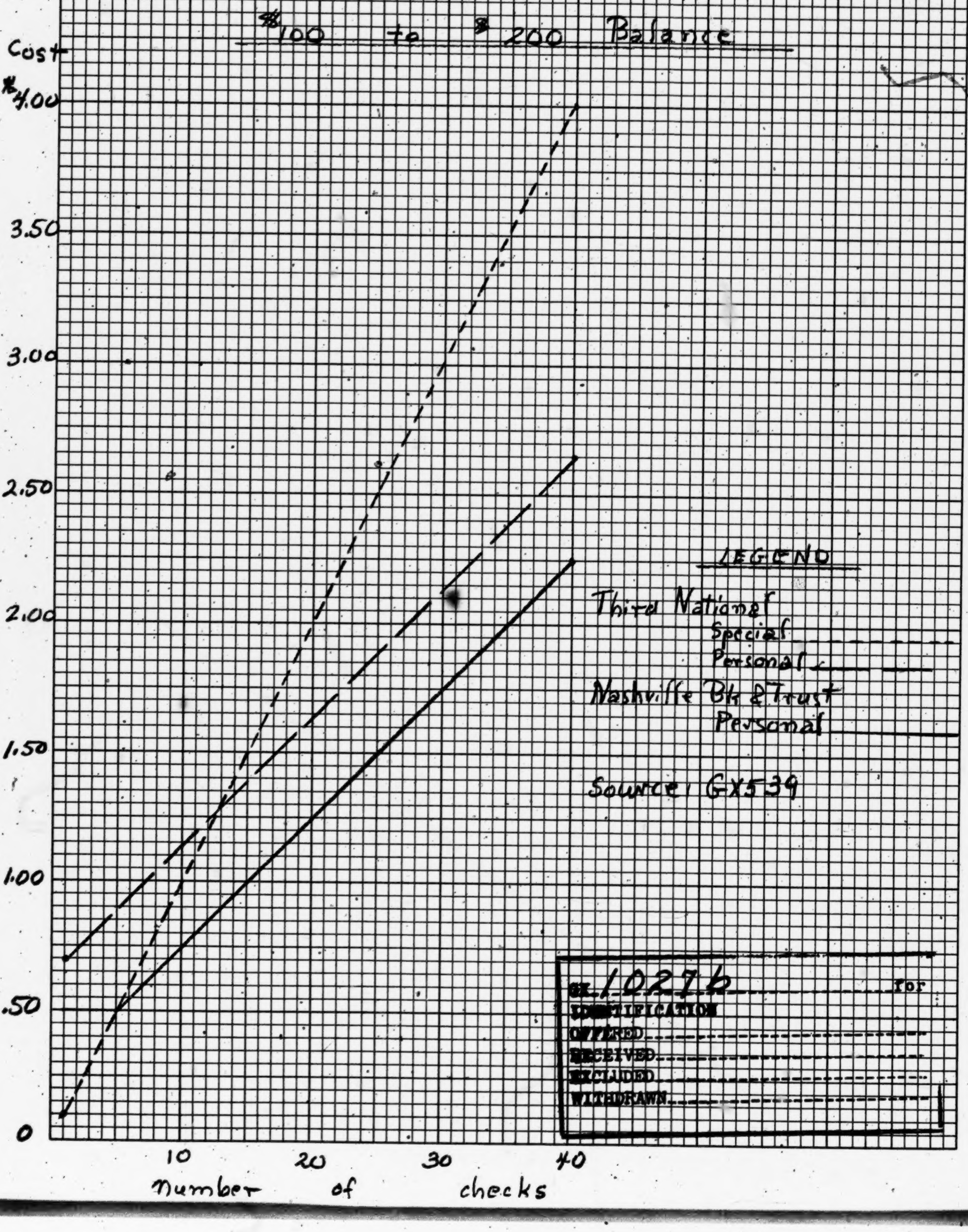
* $500.00 Savings Account or more will exempt checking account from above charges.

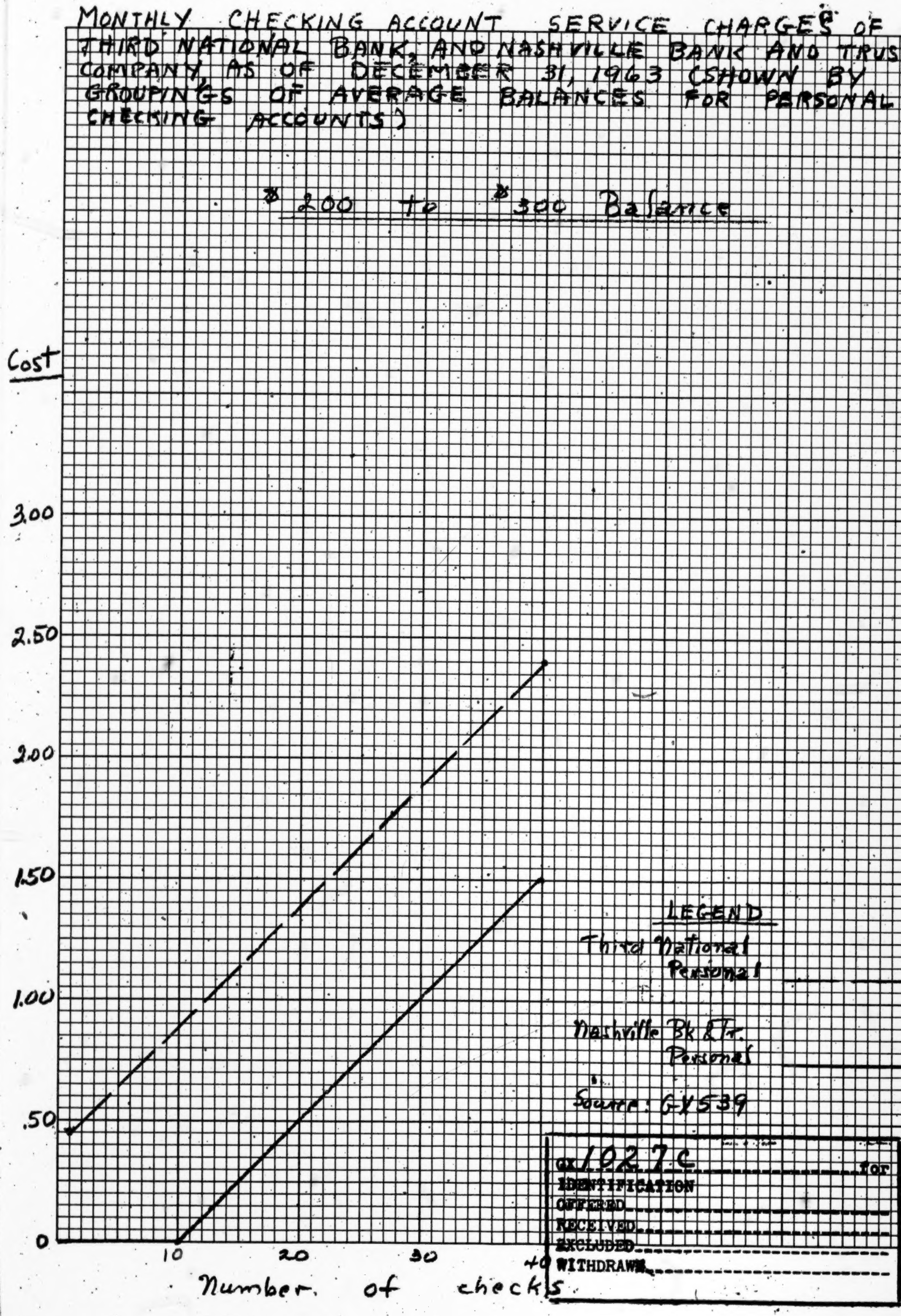
IN UNITED STATES DISTRICT COURT

PLAINTIFF'S EXHIBIT No. 1027



MONTHLY CHECKING ACCOUNT SERVICE CHARGES OF THIRD NATIONAL BANK AND NASHVILLE BANK AND TRUST COMPANY, AS OF DECEMBER 31, 1963 (SHOWN BY GROUPINGS OF AVERAGE BALANCES FOR PERSONAL CHECKING ACCOUNTS)





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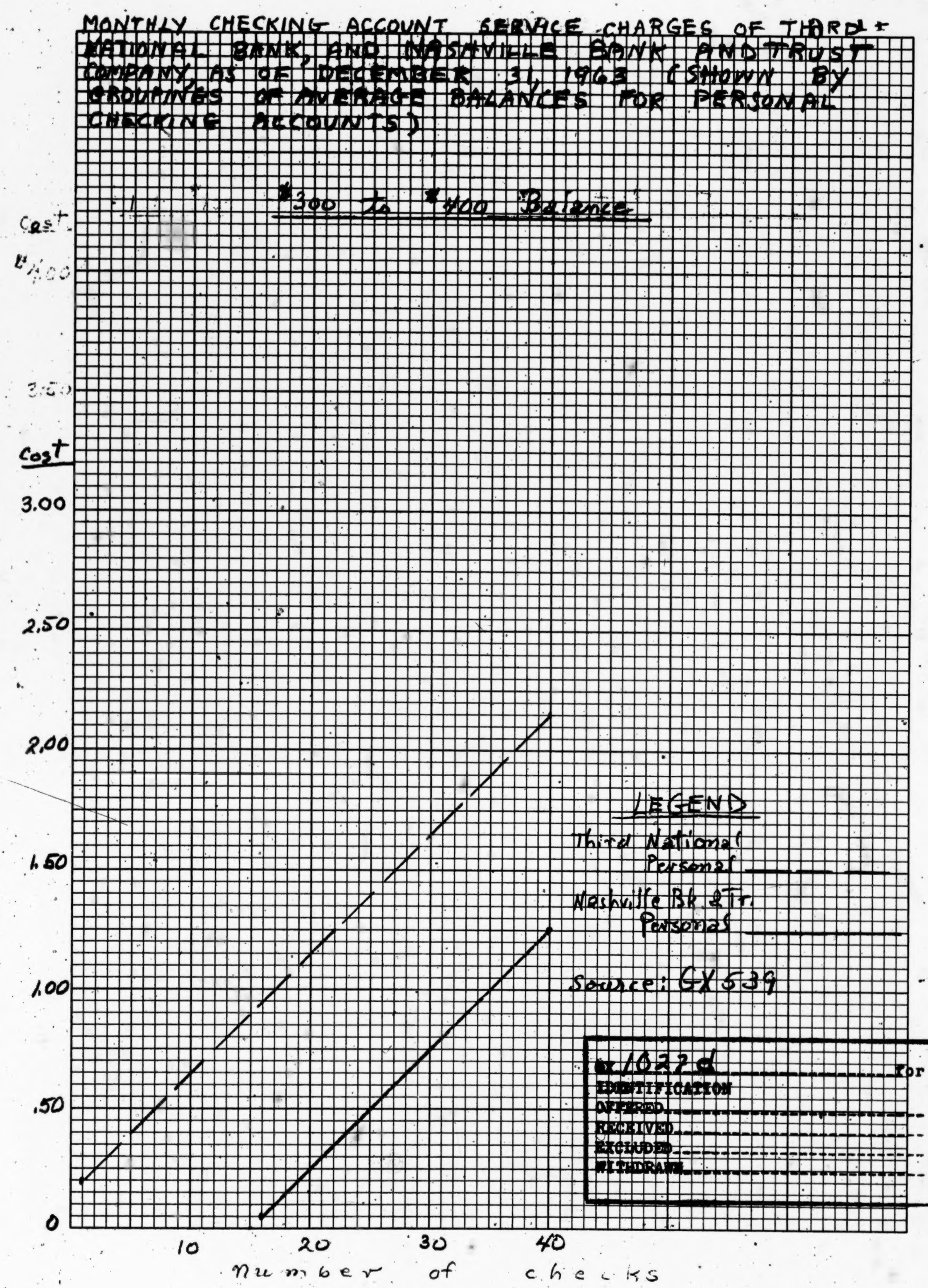
MONTHLY CHECKING ACCOUNT SERVICE CHARGES OF THIRD NATIONAL BANK, AND NASHVILLE BANK AND TRUST COMPANY, AS OF DECEMBER 31, 1963 (SHOWN BY GROUPINGS OF AVERAGE BALANCES FOR PERSONAL CHECKING ACCOUNTS)
$300 to $400 Balance
Cost
Cost
3.00
2.50
2.00
1.50
1.00
.50
0
10
20
30
40
number of checks
LEGEND
Third National Personal
Nashville Bk & Tr. Personal
Source: GX 539
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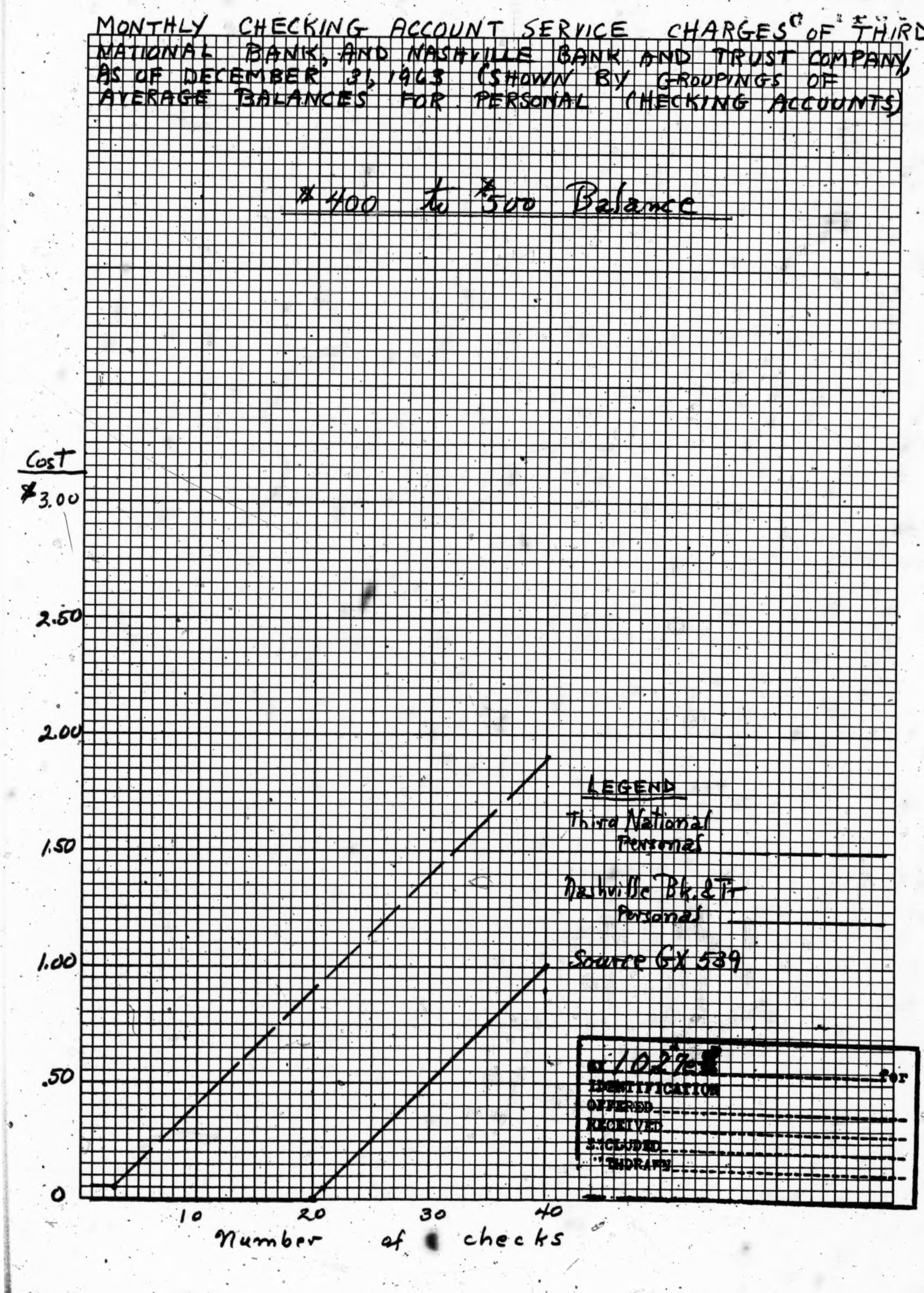

MONTHLY CHECKING ACCOUNT SERVICE CHARGES OF THIRD NATIONAL BANK, AND NASHVILLE BANK AND TRUST COMPANY AS OF DECEMBER 31, 1963 (SHOWN BY GROUPINGS OF AVERAGE BALANCES FOR PERSONAL CHECKING ACCOUNTS)
$400 to $500 Balance
Cost
$3.00
2.50
2.00
1.50
1.00
.50
0
10
20
30
40
Number of checks
LEGEND
Third National Personal
Nashville Bk. & Tr. Personal
Source GX 539
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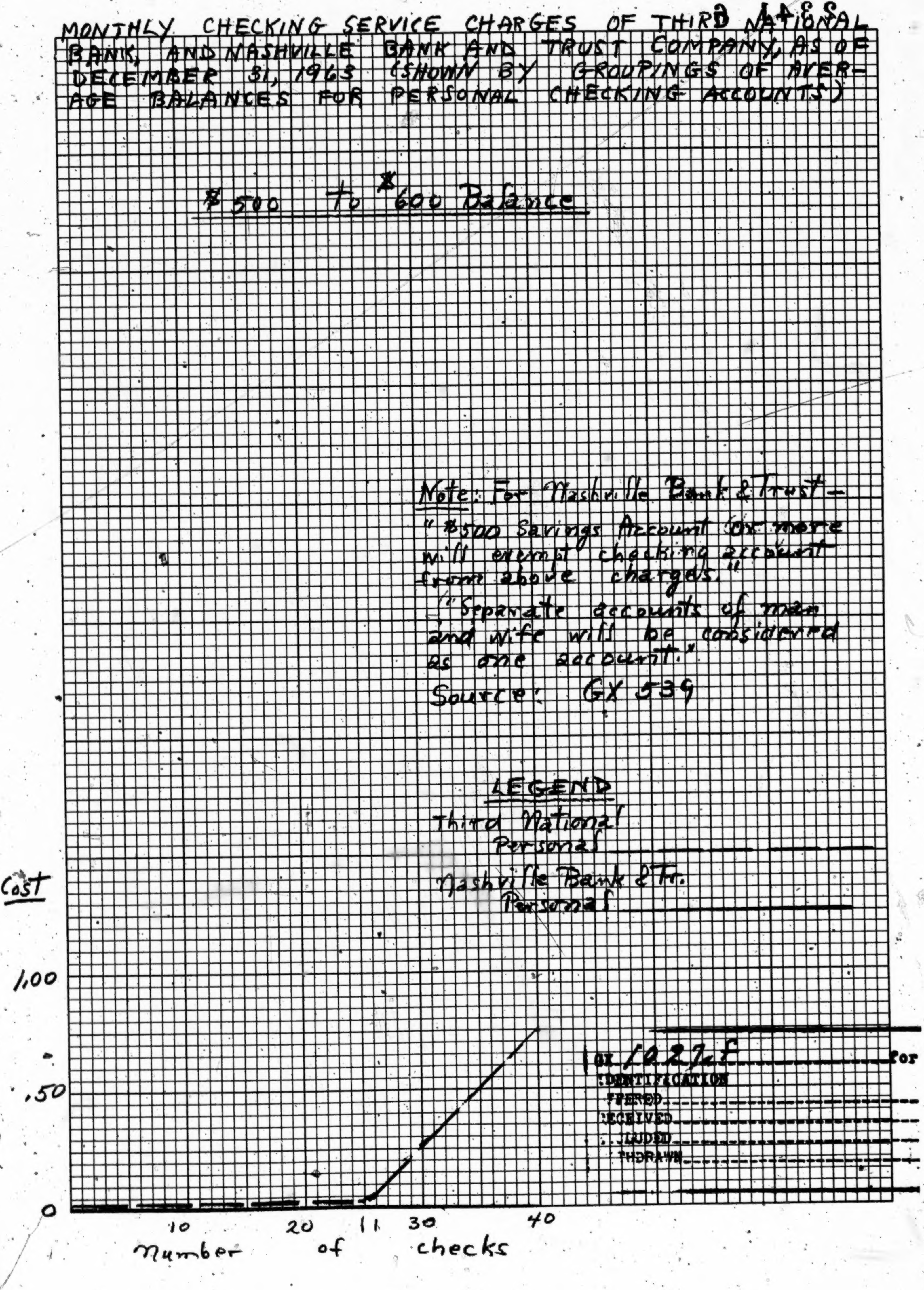
MONTHLY CHECKING SERVICE CHARGES OF THIRD NATIONAL BANK, AND NASHVILLE BANK AND TRUST COMPANY, AS OF DECEMBER 31, 1963 (SHOWN BY GROUPINGS OF AVERAGE BALANCES FOR PERSONAL CHECKING ACCOUNTS)
$500 to $600 Balance
Note: For Nashville Bank & Trust—
"$500 Savings Account or more will exempt checking account from above charges."
"Separate accounts of man and wife will be considered as one account."
Source: GX 539
LEGEND
Third National Personal
Nashville Bank & Tr. Personal
Cost
1,00
.50
0
10
20
11
30
40
Number of checks
GX 1027-F
IDENTIFICATION